

THE BILLS – OVERVIEW OF TOPICS

a. Demand-side management (buildings)

i. Government structure:

1. New roof for energy programs (LDs 886, 955, 1181, 1201 -- see OPLA side by side of proposals)

or

2. Refocus directive to PUC (LD 501)

ii. Programs:

1. Revise and combine existing programs and add one or more new programs (with appropriate funding) to meet goals (LDs 886, 1201)

or

2. Retool with wide range of specific new programs (with commensurate level of new funding) (LD 1181)

iii. Tax incentives

1. income tax credits for equipment, systems, materials (LDs 980, 755), insulation (LD 501), rental property energy audits (LD 885)

iv. Funding:

1. Existing:

T&D SBC (<i>expand or as is</i>)	(PUC '10 about \$15M)
Nat. gas funding (<i>expand or as is</i>)	(Unitil '09 about \$0.7M)
RGGI	\$6.7M–17.9M/yr
Federal funds	
On going	
weatherization	
DOE	9 yr avg. \$2.8M/yr
LIHEAP	9 yr avg. \$4.3M/yr
SEP	9 yr avg. \$0.4M/yr
EECBG (potential)	(not previously funded)
New ARRA	
Weatherization (DOE)	\$42M
SEP	\$27M
EECBG	\$9.5M¹

2. New

GO bond (see bond bill table)	?
Revenue bond (repaid through new revenue source) (LDs 1181, 886)	?
Heating fuel assessment (LDs 886, 501)	? ²
Electric/gas/heating fuel assessment (LD 1881)	? ³
Lease corridor (hwy/submerged lands) (LDs 1201, 955)	?

¹ State portion; additional amounts to cities and counties; 60% of state portion must be sub-granted to local government.

² LD 886 proposal appears to produce roughly \$13M in first year, rising to \$35M in year 10, producing total of roughly \$240M (using 08 volume figures – see attachment to LD 886 OPLA summary for assumptions).

³ LD 1181 testimony seemed to suggest proposal would generate roughly \$180M/year.

THE BILLS – OVERVIEW OF TOPICS

- v. New all-building audit requirement (LD 1181)
- vi. New government building standards for state, schools, counties, towns, low-income housing (LD 1181)
- vii. Modify local authority to promote DSM (ESCO contracting, use of tax bill financing) (LD 1181)
- viii. Change T&D rate law to promote efficiency/DG (decoupling, CPCN standards, use of billing system, DG rates) (LD 1181)
- b. Workforce development**
 - i. Training (beef up existing programs, establish standards, etc.) (LD 886, 1201, 1181)
 - ii. Create detailed new jobs program to create career ladders and sector partnerships (LD 1181)
 - iii. Develop proposal for downeast and coastal region green energy industrial partnership
 - iv. Examine impediments to business participation in “green economy” (LD 1181)
- c. Establish appliance standards** (LD 1181)
- d. Transportation efficiency**
 - i. Require new state fleet fuel economy standards (LD 1181)
- e. Grid-scale renewable policy**
 - i. Increase RPS (LD 1181)
 - ii. Fund R&D (through some new revenue source, e.g., leasing corridors) (LDs 1181, 955)
- f. Fund affordable housing** (with energy efficient design)
 - i. MSHA program using portion of transfer tax (LD 774)
 - ii. MSHA program using GO bond (LD 910)
- g. Lease corridors (highways and state waters)**
 - i. Study it (proposed by Rep. Martin)
 - ii. Direct that state move forward and use resulting funds for
 - 1. energy programs (LD 955, 1201)
 - 2. business development (LD 955, 1201)
 - 3. agriculture R&D (LD 955)
 - 4. fisheries management (LD 1201)
 - 5. medical school (LD 955)
 - 6. transportation infrastructure (LD 955, 1201)

MAINE'S ENERGY FUTURE BILLS OVERVIEW

Broad subject area	Type of initiative	Detail	Funding proposed
Government structure	Reorganize or refocus	Reorganize (see Choice of Entity side-by-side comparison of LDs 886, 1201, 955 and 1181) <i>or</i> refocus directive to PUC (LD 501)	
Building efficiency	Retool	<ul style="list-style-type: none"> Require <i>all buildings (public and private) to be audited</i> (with certain exceptions); if done through new state entity, state pays Create new <i>detailed set of all fuels programs</i> – energy efficiency and DG (<i>residential, commercial, public sector, higher educ., hospital and non-profit, industrial</i>) (LD 1181) 	<ul style="list-style-type: none"> New all fuels assessment¹ Federal funds
	Combine existing programs	<p>Programs LDs propose to combine or integrate in various ways:</p> <p><i>PUC</i>: electric conservation programs, natural gas conservation program (PUC/utl.), training (auditors, solar installers), public information program, rental unit disclosure/standards program, small business revolving loan program, federal energy programs, solar/wind rebate program</p> <p><i>MSHA</i>: weatherization and efficiency programs</p> <p><i>Carbon Trust</i>: RGGI fund programs</p> <p><i>MECB</i>: energy conservation/CO2 reduction plan/advice</p> <p><i>ERC</i>: interagency energy coordination/planning</p> <p><i>OEIS</i>: energy planning</p>	<ul style="list-style-type: none"> Existing or expanded
	Establish certain new programs	Create new <i>weatherization</i> program (<i>middle and upper income</i>) (LD 1201)	<ul style="list-style-type: none"> Federal funds GO bond? (see bond table) Potential: hwy/ waters utl. leases
		Create new <i>heating fuel efficiency and weatherization</i> program (<i>residential, commercial and institutional</i>) energy auditor training and equipment cost support; use to support MSHA bond revolving loan fund (could be used for all fuel weatherization program) (LD 886)	<ul style="list-style-type: none"> New heating fuel assessment GO bond? (see bond table)
		Create new revolving loan program -- <i>weatherization and system conversion</i> (<i>residential/commercial</i>) (LD 955)	<ul style="list-style-type: none"> Leasing hwy corridors GO bond? (see bond table)

¹ Electric, natural gas, heating fuels. Testimony on LD 1181 seemed to suggest bill would generate about \$180M/year.

MAINE'S ENERGY FUTURE BILLS OVERVIEW

Broad subject area	Type of initiative	Detail	Funding proposed
		Create new program to <i>insulate homes for low-income</i> (LD 501)	• RGGI funds
		Create new low-interest loan program for homeowners and businesses to <i>purchase insulation</i> (LD 501)	• RGGI funds
		Allow new form of <i>aggregation</i> <ul style="list-style-type: none"> allow MMBB to aggregate energy efficiency products and services for governmental entities (LD 1181) Allow new entity to aggregate energy eff. products and services for gov. entities, nonprofits and small businesses (LD 1181) 	• No new funding
		Create new <i>public education</i> program regarding energy efficiency (LD 1181)	• New all fuels assessment
		Create new <i>R&D funding</i> program (MTI efficiency and renewable technology) (LD 1181)	• New all fuels assessment
		Promote the use of <i>heat pump</i> technology and pursue/promote internet-based (<i>smart grid</i>) demand-side management programs (LD 501)	• New tax on oil • Current funding sources
		Create new <i>load management</i> program (LD 1181)	• Forward capacity payments
	Modify programs	Modify MMBB <i>Eff Partners program</i> for schools and municipalities to allow funding of DG and provide new entity to administer funds (LD 1181)	• No new funding
		Expand <i>natural gas efficiency program</i> : <ul style="list-style-type: none"> admin by utl. or new entity (LD 886) or expressly by new entity (LD 1201) 	• Expand SBC to all nat. gas utilities
		Expand <i>electric efficiency program</i> (LD 886)	• T&D SBC
	Create new requirements	Increase/establish <i>government building standards</i> : LEEDs silver and consideration of DG ² : increase for state and school, create for counties, municipalities and low-income housing (LD 1181)	Funding support <ul style="list-style-type: none"> New all fuels assessment Federal funds
		Require nearly all agencies to <i>coordinate energy-related programs through new entity</i> (LD 1181)	

² UTE has a bill to create building performance rating system – LD 935

MAINE'S ENERGY FUTURE BILLS OVERVIEW

Broad subject area	Type of initiative	Detail	Funding proposed
	Create tax incentive	<p>establish income tax credit for <i>equipment, systems and materials</i></p> <ul style="list-style-type: none"> • installation costs of energy eff. equipment, qualifying nonfossil fuel energy systems and weatherization materials (LD 755) • <u>system/equipment costs</u>: weatherization, efficiency, renewable heating systems; energy eff. Equip.; voltage regulation (LD 980) <p>establish tax exemption for <i>insulation</i></p> <ul style="list-style-type: none"> • tax exemption for purchases of building insulation (LD 501) • progressive tax credit to companies for maximizing the insulation value of their buildings (LD 501) 	<ul style="list-style-type: none"> • RGGI funds • RGGI funds • Other – fed. EECBG? • RGGI funds
		<p>establish tax credit for <i>energy audit of rental property</i> (LD 885)</p> <p>Require consideration of “min. standards of efficiency” in <i>new line CPCN</i>³ (LD 1181)</p> <p><i>prohibit higher rate</i> to customer using DG (LD 1181)</p> <p>Change <i>rate design</i> to require decoupling – ERAM (LD 1181)</p>	<ul style="list-style-type: none"> • General Fund
	Modify T&D regulation	<p>Allow DSM providers use T&D or gas <i>utility billing systems</i> for on-bill financing;⁴ allow State to use for info. distribution (LD 1181)</p>	
	Expand local authority	<ul style="list-style-type: none"> • Modify <i>ESCO contract authority</i> of schools and counties (add DG, allow longer payback) (LD 1181) • Allow municipalities to integrate collection for energy efficiency <i>loans into tax bill</i> (LD 1181) 	
Business/work force development	Create new program	<p>Create new low-interest marginal risk loan program for equipment and costs to start up <i>insulation companies</i> (LD 501)</p>	<ul style="list-style-type: none"> • RGGI funds
		<p>Fund new <i>workforce development/jobs</i> program: DOL/DECD/DPFR/Jobs Council/ adult ed : education, green jobs, career ladders, sector partnerships (LD 1181)</p> <p>Create new insulation and energy auditing <i>training</i> program at every community college in the State (LD 501)</p>	<ul style="list-style-type: none"> • 5% of new fuels assessment • GF school funding • GO bond (LD 709) • RGGI funds

³ PUC in determining PC&N currently examines potential efficiency measures that might replace or delay need for line.

⁴ UTE committee also has bill regarding on-bill financing, LD 792.

MAINE'S ENERGY FUTURE BILLS OVERVIEW

Broad subject area	Type of initiative	Detail	Funding proposed
		New or expanded energy <i>training</i> or training funding programs (LD 1181, 886, 1201)	<ul style="list-style-type: none"> • New all fuels assessment • New heating fuel charge
	Develop proposal	Require DOL and DECD to develop a proposal for a green energy <i>industry partnership</i> for the downeast and coastal regions for; explore other possible energy industry partnership proposals (LD 1181)	<ul style="list-style-type: none"> • funding by the Northern Border Regional Commission
	Create study	Require DECD to report on <i>barriers to participation</i> in the green energy economy by certain entities (LD 1181)	
Appliances	Create new requirements	Require new <i>appliance efficiency standards</i> -- initially require CA standards; allow other	
Affordable housing	Create new program	Create new MSHA revenue bond fund for construction, renovation, and weatherizing <i>housing</i> and replacing mobile homes ⁵ (LD 774)	<ul style="list-style-type: none"> • Real estate transfer tax (GF) • GO bond?
Transportation	Create new requirement	Establish the higher <i>fuel economy standards</i> for State fleet (LD 1181)	
Renewables -- grid scale	Create new requirement	<i>Increase RPS</i> -- keep 30% ERP; increase new source RPS to reach 23% in 2017 (LD 1181)	
	Establish new program	<i>Fund R&D</i> <ul style="list-style-type: none"> • Off-shore wind (LD 955) • Renewable technology (LD 1181) 	<ul style="list-style-type: none"> • Leasing hwy corridors • GO bond (LD 913)? • new all fuels assessment
Lease corridors	Potential new revenue	<ul style="list-style-type: none"> • Study it • Direct leasing to occur and use funds for: <ul style="list-style-type: none"> ○ <i>energy, economic development, fisheries management</i>, (LD 1201) ○ <i>business expansion</i>, start up or relocation (LD 955) ○ Fund new R&D for <i>agricultural</i> workforce development, business opportunities programs (LD 955) ○ Create virtual <i>medical school</i> (LD 955) ○ <i>transportation infrastructure</i>: mass transit, ports, rail (LD 955) ○ <i>East-west highway</i> (LD 955) 	<ul style="list-style-type: none"> • Potential: funds from leasing hwy and state waters for utilities

⁵ Note: LD 910, bond bill, proposes \$25M bond for MSHA new and rehab sustainable environmentally friendly housing.

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

General type of entity	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	Efficiency Maine Plus (EM+): <ul style="list-style-type: none">independent authority and public body corporate and politic and instrumentality of the state	Efficiency Maine Trust (EMT) <ul style="list-style-type: none">nonprofit, 501(c)(3) charitable organization (p. 12, line 13)“independent fiscal agent for public investments”“not a state entity” (p. 14, lines 29-30) but has authority to adopt governmental rules having the force of law¹ (p.20, lines 1-18).	Energy Trust Authority (ETA) <ul style="list-style-type: none">“under OEIS”²“quasi-state entity” with the broad powers	Efficiency Maine (EM) <ul style="list-style-type: none">public body corporate and politic and instrumentality of the state“franchise” to develop and administer programsbut its administrator is a private entity
Purposes	To plan, develop and implement energy conservation, carbon reduction and renewable energy programs To meet goals: <ul style="list-style-type: none">Greenhouse gas reduction 10% below 1990 levels by 2020Weatherize 100% residences by 2030Weatherize 50% businesses by 2030Reduce peak electric load by 100 MW by 2020Increase jobs and business development to deliver efficiency and renewable products and services	<ul style="list-style-type: none">planning, program design and administration of certain energy efficiency programsReduce energy costs and improve security of the state and local economies by<ul style="list-style-type: none">Maximizing the use of cost-effective energy efficiency and weatherization;Reducing economic insecurity from overdependence on price-volatile heating fuels;Increasing new jobs and business development to deliver energy efficiency products and services;Enhancing heating benefits for low-income eligible households through weatherization, thus improving the comfort and indoor	<ul style="list-style-type: none">Actively pursuing opportunities to lease portions of the State's highways and rights-of-way, including Interstate 95 and the Maine Turnpike, for the transmission of energy, including electricity, natural gas or other fossil fuel;Ensuring the interconnection between the State's major transit systems of rail, ports and highways to maximize the State's connection to the national and international economy; andDeveloping and implementing specific programs that ensure the State's reduction of its carbon footprint and greatly	to develop and run a variety of new programs to increase energy efficiency conservation and distributed renewable energy technology <ul style="list-style-type: none">goal by end 2018, provide services to each low-income residentgoal: by end 2018, provide services to each small businessgoal: by end 2018, provide services to each municipality and countystrive to overcome economic barriers to DSM

¹ NOTE: As drafted, legal status of the EMT is ambiguous, e.g., it is described at p. 14, line 30 as "not a state entity", but it has responsibility for administering and overseeing state energy programs and state funds and has the power to adopt rules having the force of law.

² NOTE: OEIS indicates this will require a "vast increase in financial resources for the office"

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
		<p>air quality of these households and reducing the need for future fuel assistance;</p> <ul style="list-style-type: none"> • Simplifying and enhancing consumer access to technical assistance and financial incentives for energy efficiency and weatherization by merging dispersed, uncoordinated programs under a single administrative unit possessing independent management and expertise; and • Using cost-effective energy efficiency investments to reduce greenhouse gas emissions; and • Ensure that all expenditures of the trust are cost-effective in terms of avoided fuel costs. 	expanding healthy opportunities for the people and businesses of this State.	
modification of existing agencies	<p>On July 1, 2010, <u>abolishes</u> and transfers functions to EM+:</p> <ul style="list-style-type: none"> • Carbon Savings Trust (use of RGGI fund unchanged) • Maine Energy Conservation Board • Energy Resources Council and • PUC energy efficiency functions <ul style="list-style-type: none"> o electric efficiency programs, 	<p><u>abolishes</u> and transfers functions to EMT:</p> <ul style="list-style-type: none"> • Carbon Savings Trust (use of RGGI fund unchanged) • Maine Energy Conservation Board (EMT develops triennial energy plan) • certain PUC energy programs <ul style="list-style-type: none"> o electric efficiency programs, o federal energy programs, and 	not specified	<p>abolishes most PUC energy efficiency functions (EM administers new programs)</p> <ul style="list-style-type: none"> • electric efficiency programs, • federal energy programs, • training programs • natural gas conservation program

³ Director is chair of EM+ Council; promotes interagency coordination with EM+; consults with EM+ in developing state energy plan; submits annual report to UTE on activities of OEIS and describe progress in implementing state energy plan.

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	<ul style="list-style-type: none"> o federal energy programs, training programs o work with MSHA on rental disclosure forms/standards o provider of public information about energy efficiency and natural gas conservation program oversight (program modified) o PUC solar and wind rebate program <p><u>preserves</u> OEIS but modifies its role³</p>	<ul style="list-style-type: none"> o natural gas conservation program oversight (program modified) <p><u>preserves</u> PUC role as</p> <ul style="list-style-type: none"> • provider of public information about energy efficiency (35-A 10001) • training of solar installers and auditors (35-A §10002 10003) • work with MSHA on rental disclosure forms/standards (35-A 10006) <p><u>preserves</u> OEIS as is</p>		<ul style="list-style-type: none"> • work with MSHA on rental disclosure forms/standards (EM would handle) • <u>preserves</u> MECB • <u>that</u> EM Administrator administers the carbon trust fund and reports to trustees (use of RGGI fund unchanged and trustees preserved) • <u>preserves</u> PUC administration of solar/wind rebate program • provision of public information about energy efficiency • <u>preserves</u> ERC as is • <u>preserves</u> OEIS as is
Relationship with other agencies after reorganization (other than membership on board)	<ul style="list-style-type: none"> • Consult with MSHA on energy programs (MSHA administers its existing programs) • work with MSHA on rental disclosure forms/standards • OEIS Director is chair of EM+ Council, promotes interagency coordination with EM+, consults with EM+ in developing state energy plan. 	<ul style="list-style-type: none"> o Low-income federal programs would be administered by MSHA with approval of plans by the EMT o Allows MSHA to issue revenue bonds of \$10 million/year for 5 years and transfer the proceeds to the EMT for use as a revolving loan fund. Language (p. 26, lines 13-15) indicates debt service is paid from the program funds.⁴ o Provides for certain oversight of the EMT by the PUC.⁵ 	not specified	<ul style="list-style-type: none"> • PUC jurisdiction to regulate EM as public utility and the administrator of EM w/re reasonableness and adequacy of service, terms and conditions (see 1-3, 1-10, 1-11) (NOTE: <i>PUC also sits on board of EM</i>) • all state agencies administering programs related to energy efficiency or distributed generation must contract with EM to

⁴ NOTE: May need some further clarity as to how the revolving loan fund is to be applied and the role of MSHA, if any, beyond issuing the bonds.

⁵ NOTE: EMT not a public utility, so PUC's role and authority with respect to overseeing EMT is not fully clear. For instance, if the PUC finds EMT is mishandling funds or not meeting performance measures, does the PUC need to be given some authority to address the problem? Also not clear how much funding is available to the PUC to fund it role (see OPLA summary for further discussion of issues).

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
		<ul style="list-style-type: none"> • EMT programs must be in accordance with a triennial plan created by EMT and approved by the PUC. • The PUC "negotiates" and approves performance measures governing the EMT • The PUC arranges for an independent evaluation of major programs (over \$500,000/year) at least once every 3 years • Each year the EMT is required report to the PUC and the UTE committee an accounting of its activities, funding and expenditures (p. 17, line 27 to p. 18 line 35). • The PUC is directed to establish a fund to defray its costs in overseeing the EMT 		<p>administer the program, unless doing so is contrary to law or is not cost-effective. MSHA and MMBB expressly exempted;</p> <ul style="list-style-type: none"> • EM becomes administrator of funding distribution of Efficiency Partners (MMBB loan program for municipal and school buildings) • Requires MMBB to consult with EM in administering most programs/funds: CWA remediation revolving loan fund; SDWA loan fund; municipal lease finance program; municipal public improvement program; school facilities lease purchase program; school revolving renovation program; MMBB general fund and reserve funds; • PUC and MSHA must consult with EM in developing residential energy efficiency disclosure statement (for landlords to provide to renters)
Oversight board	<p>EM+ Council⁶: 9 voting members <i>appointed by Gov. and subject to confirmation</i> by legislature who serve 3-year staggered terms</p> <ul style="list-style-type: none"> • 3 ex officio⁷ 	<p>The EMT is governed by a 16 member board, 12 voting members:</p> <ul style="list-style-type: none"> • 9 members <i>appointed by the PUC</i> 	<p>ETA consists of 16 voting members:</p> <ul style="list-style-type: none"> • Public Advocate; • Director of OEIS 	<p>EM Board composed of 10 voting members</p> <ul style="list-style-type: none"> • director SPO • OPA (rep. small bus. and

⁶ NOTE: relationship and respective responsibilities of director and Council not clear.

⁷ NOTE: ex officio members presumably should not be appointed and subject to confirmation.

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	<ul style="list-style-type: none"> o director OEIS who serves as chair of Council o chair PUC, o director MSHA • 4 representing consumer groups: <ul style="list-style-type: none"> o residential o commercial o small business, o industrial • 2 public members with relevant expertise <p>members must be appointed by July 1, 2009⁸ (p. 24 line 26)</p>	<ul style="list-style-type: none"> o 3 with relevant expertise (p. 13, lines 9-29). o 6 representing various interests (commercial, industrial, small business, residential, low-income, environmental) • 3 members appointed by the Governor: rep of DEP, OEIS and MSHA • 4 nonvoting members <i>appointed by the Governor</i>; representatives of <ul style="list-style-type: none"> • electric utilities⁹ • natural gas utilities and heating fuel industry <p>An affirmative vote of 2/3 of the voting members (8) is required to take any action (p. 14, line 8).</p>	<ul style="list-style-type: none"> • CEO FAME; • A comm. of PUC rep. from the U of ME; • rep. from Comm. College Sys. • Comm. DECD or designee; • Comm. of DOT or designee; • 4 public members <i>appointed by the Governor and confirmed by the Legislature</i>; representing <ul style="list-style-type: none"> o industry, o labor, o environmental groups, o the health care industry o agriculture¹⁰ • 4 Legislators¹⁰ 	<ul style="list-style-type: none"> • residential customers • director OEIS • director MSHA • PUC chair • Commissioner DEP • Commissioner Labor • trustee of Carbon Saving Trust • commercial consumer --<i>appointed by Gov and confirmed by Legislature</i> • industrial consumer -- <i>appointed by Gov and confirmed by Legislature</i> <p><u>Board staff.</u> PUC provides staff to board and board may hire its own staff</p>
Administrative entity	The director is appointed by the Governor, subject to legislative confirmation.	The <u>EMT</u> board appoints a director, serves at the pleasure of the board,	not specified	<u>EM</u> appoints and contracts (5 yr term) with a private nonprofit administrator who develops and administers EM

⁸ NOTE: will be subject to Legislative confirmation.

⁹ NOTE: should be T&D.

¹⁰ NOTE: having legislative members on a board with executive functions would raise substantial constitutional separation of powers issues. For discussion of the constitutional separation of powers issue, see Op of AG No. 92-4, June 3, 1992.

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	<ul style="list-style-type: none"> Serves a 4-year term The "powers and duties" of EM+ are "vested solely in the director"¹¹ (p. 4, line 17) Governor must appoint 1st director by October 1, 2009¹² (p. 24, line 28) Director hires staff 	<ul style="list-style-type: none"> manages the EMT programs, hires staff and establishes an office "outside state government" (p. 14, lines 13-27). 		<p>programs</p> <ul style="list-style-type: none"> board reviews and comments on administrator's plan and actions and budget administrator has broad power to run programs, spend funds, enter contracts, issue loans, establish qualifications for contractors, etc.
Employees	<ul style="list-style-type: none"> Director hires staff who are not state employees (p. 25, line 40) <ul style="list-style-type: none"> except during transition (thru July 1, 2010 --when current programs are transferred to EM+), EM+ employees are on payroll of PUC (p. 25, line 8) Director shall give preference to PUC EM employees in hiring (p. 25, line 32) 	<ul style="list-style-type: none"> The director, hires staff The EMT fixes compensation of all employees (p. 15, line 34-35). <i>status not clear: EMT employees appear not to be state employees</i> 	not specified	Other than any PUC staff provided to board, not state employees
conflict of interest/ disclosure	Probably those applicable to other state entities (5 MRSA §18; director 5 MRSA §18-A, 19)	not clear	not specified	<ul style="list-style-type: none"> all members of EM board and employees and contractor of administrator subject to conflict of interest provisions of 5 MRSA §18 only; <ul style="list-style-type: none"> except senior managers of the administrator are

¹¹ NOTE: this seems to contradict those portions of the bill that direct the EM+ Council to develop, plan, establish, coordinate and evaluate EM+ programs. Should clarify relationship between director and council. Intent that Council oversees EM+ and the director administers programs at direction of Council? May want to clarify that Council can delegate to director certain powers.
¹² Note: will be subject to Legislative confirmation.

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
Funding	<p>see funding table for LD 1201</p> <p>NOTE:</p> <ul style="list-style-type: none"> Current process for legislative approval of increases in T&D SBC through review of PUC budget maintained (p. 27, lines 22-28) No process for legislative approval of level of new gas SBC (min 3%) (p. 29, lines 11-23) 	<p>see funding table for LD 886</p> <p>NOTE:</p> <ul style="list-style-type: none"> Status of EMT funds should be clarified.¹³ Current process for legislative approval of increases in T&D SBC through review of PUC budget is eliminated (p. 5, lines 30-35) No process for legislative approval of level of gas SBC (amount necessary to achieve goals) (p. 11, lines 4-11) 	<ul style="list-style-type: none"> Lease state highways issue revenue bonds through the Maine Municipal Bond Bank, contract with the Finance Authority of Maine or other entities to provide loans or grant funds, 	<p>subject to financial disclosures under 5 MRSA § 19.</p> <ul style="list-style-type: none"> 17 MRSA § 3104 does not apply to any representative of EM <p>See funding table for LD 1181</p> <p>NOTE:</p> <ul style="list-style-type: none"> no sta-cap or di-cap allowed for new efficiency fund adds EM as a public utility under the ME Public Utility Financing Bank (I-13)
Budget allocation	<ul style="list-style-type: none"> By grant to EM+ (except with respect to any allocations for PUC employees) Director must develop budget for Oct 1, 09 – July 1, 2010, which is then approved by EM+ Council; PUC is required to provide the funds from the electric conservation fund and the Carbon Trust 	By grant to EMT	not clear	<ul style="list-style-type: none"> By grant to board (board contracts with administrator) board reviews and comments on administrator's plan and actions and budget
contracting for service providers	<ul style="list-style-type: none"> In operating electric efficiency program: (p. 25 line 36), the council adopts rules 	The EMT is not subject to State Purchasing Agent competitive bidding rules that apply to	not specified	<ul style="list-style-type: none"> Selection of service providers (including administrator,

¹³ The bill suggests all funds deposited with the trust (federal funds, T&D SBC, natural gas DSM funds and the heating fuel charge) are “not state funds” (p. 14, line 31). It is unclear what this means. They are public funds collected through government assessments for public purposes. If the intent is to “protect” them from reallocation by future legislatures, the only means to that end would be a constitutional amendment providing some protection. The various EMT funds are established and treated in various ways under the bill – see OPLA bill summary for more detailed discussion of issues

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	governing the procedures for selecting providers: current general requirement to use competitive bidding is removed	State agencies in selecting service providers (p. 19, lines 36-40).		<p>apparently) not subject of rules of State Purchasing Agent (competitive bidding)</p> <ul style="list-style-type: none"> Administrator, as private entity, not subject to purchasing agent rules. Administrator must in contracting and funding projects ensure certain labor practices and standards are met (see p 50 and 51) <ul style="list-style-type: none"> project labor agreements affirmative action 5 MRSA §782 preference for state residents 26 MRSA §1301 preference for state citizens; fair wage requirements 26 MRSA §1304; 26 MRSA §1313 target 20% of jobs created filled with unemployed or low-income persons
Powers/duties	<ul style="list-style-type: none"> general powers/duties see Sec 9303(4) starting on p. 4 of bill authority to adopt routine technical rules on various matters required to develop quadrennial energy efficiency plan (p. 6) develops, plans, administers and evaluates various programs 	<ul style="list-style-type: none"> general powers/duties see p 14-20 EMT "not a state entity" (p. 14, lines 29-30) authority to adopt governmental rules (p.20, lines 1-18) required to develop triennial energy efficiency plan plans, designs and administer programs¹⁴ 	<p>broad powers to accomplish its purpose, including</p> <ul style="list-style-type: none"> power to adopt rules the power to develop and implement programs, enter into contracts with public and private entities to accomplish the purpose of the 	<ul style="list-style-type: none"> EM board broad powers similar to FAME (except is not given power to issue bonds) see <ul style="list-style-type: none"> p.48 lines 14-29 p.49, line 7 – p.50, line 13 p.52 line 11 – p. 53, line 30 EM administrator also broad powers, see

¹⁴ NOTE: See OPLA bill summary of LD 886 for various technical issues with these portions of the bill

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- not including LD 501 proposal to expand PUC EM charge

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	<ul style="list-style-type: none"> o electric efficiency programs (current law) o RGGI fund programs (current law) o natural gas efficiency programs (expanded) o solar and wind rebate programs (current law) o training and certification of energy auditors; weatherization technicians, solar and wind energy system installers (current law) o federal energy programs o energy conservation small business loan program (current law) o rental disclosure/standards (current law) o unregulated fuels programs (new -- no funding) o weatherization program (new) o public information (current law) 	<ul style="list-style-type: none"> o Electric efficiency programs (modified) o Natural gas efficiency programs (modified) o Federal energy programs; RGGI program; o heating fuels efficiency and weatherization program (new). 	<ul style="list-style-type: none"> • authority, • set standards for energy efficiency and weatherization funded by the authority, • exercise other responsibilities possessed by. 	<ul style="list-style-type: none"> ▪ p.50 line 18- p.53, line 30 ▪ p.57 line32 – p.58, line18 • EM board authority to adopt rules • EM may aggregate public entities, nonprofits and small businesses to purchase efficiency and DG services or products in bulk (p. 53 line 22) • EM, through administrator operates broad array of new programs (see OPLA bill summary for details) <ul style="list-style-type: none"> • Residential programs • Commercial programs • Public sector programs • Higher Education, hospital and nonprofit programs • Industrial programs • Workforce development (training solar equipment installers, energy auditors, other training programs) • Education programs • Load management programs
Planning	<p>Council establishes and revises programs in accordance with its quadrennial plan</p> <ul style="list-style-type: none"> • Quadrennial plan must <ul style="list-style-type: none"> o address measures for all-fuels and all customer classes o Include measurable goals o Establish priorities for programs o Account for use of projected 	<p>EMT programs must be in accordance with a triennial plan created by EMT and approved by the PUC.</p>	<p>not specified</p>	<ul style="list-style-type: none"> • Leaves in place MECB, triennial plan developed by Carbon Trust and PUC and approved by MECB • Plan for EM programs is largely spelled out in the bill

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	<p>funding levels</p> <ul style="list-style-type: none"> ○ Include strategies that integrate conservation and renewable and efficient energy production technologies ○ Promote use of renewables • Council must hold hearing on plan • Plan an updates are presented to Governor and UTE Committee • 1st plan must adopted by on or after July 1, 2010 ○ The new director must prepare plan for Council approval by July 1, 2010 (p. 24, line 37) 			
measures of performance	<p>Council develops quantifiable measures of performance to which it will be held accountable "to the Governor and the (UTE) committee"¹⁵ (p. 5, line 13)</p> <ul style="list-style-type: none"> • Measures are to be "negotiated between the council and the Governor and the (UTE) Committee."¹⁶ (p. 5, line 16) • Also council adopts performance measures to which it will hold <i>recipients</i> of program funds 	<p>The PUC "negotiates" and approves performance measures governing the EMT</p>	<p>not specified</p>	<ul style="list-style-type: none"> • By end of 2019, EM must demonstrate that it has achieved savings at least equal to value of credits purchased (PUC adopt routine technical rules regarding measurement and verification of savings) • EM board must, in the contract with administrator, establish performance measures

¹⁵ NOTE: The agency will be accountable to the Legislature -- may want to avoid suggesting in law that it would only be accountable to a specific legislative committee

¹⁶ NOTE: not clear how this would work. If the intent is to ensure legislative approval of the performance measures, they should be established through major substantive rules or required to be submitted in the form of legislation that the Legislature would enact or amend. As written, the provision raises delegation of legislative authority and separation of powers issues

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
Further oversight		Provides for certain oversight of the EMT by the PUC. ¹⁷ <ul style="list-style-type: none"> The PUC is directed to establish a fund to defray its costs in overseeing the EMT¹⁸ 	not specified	Provides that the PUC has jurisdiction to regulate EM as public utility and the administrator of EM w/re reasonableness and adequacy of service, terms and conditions (see I-3, I-10, I-11) (NOTE: PUC also sits on board of EM)
Audit	<ul style="list-style-type: none"> Council adopts rules (all rules are routine technical rules) regarding <ul style="list-style-type: none"> Expenditure of funds Providing for independent evaluation of program expenditures Council must arrange for independent evaluation at least once every 5 years of each program with an annual budget over \$500K (p. 21, line 20) Probably subject to State Auditor audits <ul style="list-style-type: none"> Beginning Feb 1 2012, the EM+ board shall provide an annual report to Governor and UTE: <ul style="list-style-type: none"> Of its actions¹⁹ An accounting of funds received and expenditures, including of administrative fund General evaluation of fundings, programs and customer 	<ul style="list-style-type: none"> The PUC arranges for an independent evaluation of major programs (over \$500,000/year) at least once every 3 years Not clear whether subject to State Auditor audits 	not specified	<ul style="list-style-type: none"> EM board must, in the contract with administrator require management audits every 5 years requires EM to provide annual financial audit to Treasurer provides that EM is also subject to State Auditor audits (p. 54 line 34)
Reporting		Each year the EMT is required report to the PUC and the UTE committee an accounting of its activities, funding and expenditures (p. 17, line 27 to p. 18 line 35).	not specified	requires EM to provide annual reports to Governor and Legislature

¹⁷ NOTE: EMT not a public utility, so PUC's role and authority with respect to overseeing EMT is not fully clear. For instance, if the PUC finds EMT is mishandling funds or not meeting performance measures, does the PUC need to be given some authority to address the problem?

¹⁸ NOTE: PUC is directed to set aside an unspecified amount from each EMT funding source (including federal funds) "in proportion to each source's total funding level".

¹⁹ NOTE: should this be a report of EM+ actions, not just of the Council?

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
	<p>satisfaction</p> <ul style="list-style-type: none"> ▪ Summary of measures of performance ▪ Recommendation for changes to law 			
FOA	<p>Subject to FOA, no new exceptions²⁰</p>	<p><i>Not clear if EMT is subject to FOA</i></p> <ul style="list-style-type: none"> • <i>language on p. 16, lines 1-4 appears to suggest EMT is subject to FOA, but that the PUC can order that certain proprietary information remain confidential (apparently a reference to the PUC's power to issue protective orders in proceedings under 35-A, §1311-A)</i> 	<ul style="list-style-type: none"> • retain certain confidential information under provisions similar to the Finance Authority of Maine's confidentiality exemptions (broad confidentiality similar to that provided under 1181) 	<p>Administrator not subject to FOA except as provided under bill</p> <ul style="list-style-type: none"> • Meetings not public • Records made subject to FOA w/ exceptions (see below) <p>EM+ board subject to FOA, with certain exceptions for records:</p> <p>Confidentiality for EM records:</p> <ul style="list-style-type: none"> • developed or obtained by EM prior to receipt of written application as proposed for assistance • records the person submitting asks to be kept confidential if board determines it to be competitively sensitive • financial statements or other information board determines disclosure of would constitute invasion of privacy • record containing statement by person not employed by EM of credit worthiness of a person or

²⁰ NOTE: If the entity is to make loans and therefore process personal financial records, some exceptions to the FOA may be appropriate.

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
				<p>project</p> <ul style="list-style-type: none"> • certain records are exceptions to above confidentiality: <ul style="list-style-type: none"> • after filing of application -- named applicant, assistance provided or requested and description of project, names of transferor, or transferees of property to or from EM, energy related benefits of project, names of financial institutions participating • other information EM waives confidentiality of • bill prohibits wrongful disclosure -- allows board in its discretion to authorize certain disclosures (e.g. statistical info, in litigation, etc.) <p>Also adds EM to provisions allowing PUC to designate as confidential certain information potentially affecting security of utility systems (1-8)</p> <p>NOTE: all exceptions will require review by JUD.</p> <p>Personal liability immunity. EM members and employees exempt from personal liability for acting in scope of law</p>
liability/immunity	State authority under Tort Claims Act	<p>status unclear</p> <ul style="list-style-type: none"> • <i>Is it a governmental entity entitled to sovereign immunity and governed by the Tort Claims Act or is it "not a state entity"?</i> 	<ul style="list-style-type: none"> • status not clear: "enjoy protections provided to other authorities under state law" 	

MAINE'S ENERGY FUTURE -- CHOICE OF ENTITY
THE PROPOSALS -- *not including LD 501 proposal to expand PUC EM charge*

	LD 1201 (EM+)	LD 886 (EMT)	LD 955 (ETA - CONCEPT)	LD 1181 (EM)
		<ul style="list-style-type: none"> Can it create liabilities for the State through its actions? 		
Tax status	Government entity	Unclear	Government entity	Administrator private entity. Tax exemptions. Provides for general tax exemptions for EM <ul style="list-style-type: none"> leases and mortgages all property
Transition	<ul style="list-style-type: none"> On July 1, 2010, abolishes the RGGI Trust, MECB, the ERC and the EM program at PUC and transfers responsibilities to EM+²¹ PUC's existing rules relating to EM, solar/wind rebates and gas efficiency programs deemed EM+ rules²² 	not specified	not specified	Provides for the transfer of all of the PUC's Efficiency Maine program assets, funds and contracts to the new Efficiency Maine entity established under the bill. ²³

²¹ NOTE: p. 25, line 18 indicates that EM+ is successor to PUC with regard to conservation programs -- should this be qualified to indicate that this occurs on July 1, 2010? All other transition provisions (records, property, funds, etc.) pivot on that date.

²² NOTE: under the bill, the repeal of the PUC's existing programs and the moving of those programs to EM+ occurs on July 1, 2010 -- should the transfer of the rules occur on that date? (p. 25, line 12)

²³ NOTE: Not clear how quickly the transfer can occur or how quickly the new EM will be able actually to operate programs (public members of board must be appointed and confirmed by Legislature, contract with administrator negotiated (perhaps an administrator created), office established, staff in place, programs developed, rules adopted etc.) May need to provide a bridge of some sort from current paradigm to the new paradigm to avoid unintended hiatus in programs.



Maine State Legislature

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MEMORANDUM

TO: Representative Treat

FROM: Jon Clark, Esq., Deputy Director

DATE: 3 April 2009

RE: Choice of entities – an overview

You have asked that I gather for the committee some information about the types of special entities that have been established in Maine law. This memo is an initial response to that request. In addition, this memo presents some issues that the committee should consider as it ponders what sort of entity might house under “one roof” certain energy-related state programs.

Entities created by law are creatures of that law; clarity is key

If an entity is created by State law, it will be a creature of and governed by State law; the law should make clear what sort of entity it is, its powers and duties and how it fits into the structure of government. General characterizations (e.g., ‘state instrumentality’ or ‘body corporate and politic’ or ‘nonprofit corporation with public purposes’) do not in themselves clearly resolve all legal status issues.

It is worth noting the distinction between creating an entity in law (a public entity of some sort) and directing a state agency or entity to contract with a private entity to undertake certain functions. A private entity under contract will only be subject to such requirements, oversight and control as are provided in the governing law or contract (e.g., Freedom of Access laws would not apply unless specifically made to apply).

To the extent an “independent entity” is desired, it is useful to determine what sort of independence is needed. For instance:

1. Independent of an existing entity or agency?
2. Governing body independent of its appointing authority? (e.g., by virtue of fixed extended terms -- unlike department heads who are appointed by and serve at the pleasure of the Governor, PUC commissioners serve fixed, staggered 6 year terms)
3. Some level of independence from state budget oversight? (e.g., the entity may simply receive a “grant” of public funds and not be subject to line category allocations/appropriations in the budget bill)

4. Some level of independence from specific rules or procedures that would otherwise apply to a State agency? (e.g., have authority to hire its own staff and set their salaries outside state classification system, or be exempt from conflict of interest provisions, financial disclosure requirements, or State Purchasing Agent competitive bidding requirements).

When creating a new specialized entity in law, there are various policy and legal issues that should be considered. Here are some of the major ones:

1. General goals. What are the purposes of creating the special entity? What problems associated with giving the functions to an existing entity will be avoided? What functions will be better achieved by a new entity? Answering these questions will help in determining whether creating a special entity will achieve the purposes and if so the appropriate legal structure.
 - For instance, if the primary goal is to protect public funds from legislative control, creation of a special entity will not achieve the purpose. No legislature can bind a future legislature. Creating a special entity to administer public funds (monies raised by government through tax or fees for public purposes) does not remove the funds from legislative control. Absent a constitutional provision requiring funds to be used for a specific purpose (such as the provisions governing IFW funds and transportation funds), the Legislature will retain control over the application of public funds.¹
 - For instance, if a purpose is to ensure nimbleness in responding to changing market conditions, what generally applicable legal requirements for state agencies stand as impediments? State purchasing agent rules (competitive bidding requirements designed to avoid favoritism)? The Freedom of Access laws (designed to ensure transparency)? Etc. What structural features does an entity need to ensure the desired type of nimbleness (size or independence of decision-making board, etc.)?
2. Specific issues to consider (*statutory provisions or structural features that make the answers to these questions ambiguous should be avoided*):²
 - What are its powers and duties?
 - What level of legislative budget review will apply: state agency line category budget (personal services, etc.) or independent entity that simply receives lump sum “grants” of public funds?
 - Does it have its own employees? staffed by employees of some existing agency?
 - i. If it will have its own employees, what is their status? (state employees subject to Civil Service Laws or some other status?)
 - Can the entity adopt legally enforceable rules, issue licenses or adjudicate issues?
 - i. if so, the Administrative Procedures Act should apply (due process)
 - How does the Freedom of Access (FOA) law apply (public meetings and public records)?

¹ Creating a “trust fund” into which public funds are deposited does not remove the funds from legislative control. This precise question was posed to the AG by the UTE committee in 2003; see AG Op. 03-1.

² For instance, identifying an entity created by state law as “not a state entity” creates ambiguity as to its status under the FOA, Tort Claims Act, conflict of interest, and other laws.

- i. if exceptions to the FOA are needed, they should be clearly defined.
 - ii. under the FOA, any new exceptions must be reviewed by the Judiciary Committee.³
- Can the entity create liabilities for the State and if so what liabilities or is the State protected from the entity's liabilities?
- With respect the entity and its employees: what immunities and exposure to liabilities apply?
 - i. protected by sovereign immunity as modified by Tort Claims Act or special provisions governing immunities?
- What conflict of interest and or financial disclosure requirements apply?
- How will the transition occur (e.g., transitioning programs, time for new entity to become established, hire staff, adopt rules, etc.)

Existing entities; a survey

There are a great many public entities of various types created under state law:

1. state agencies (e.g., DAFS),
2. boards associated with agencies (e.g. LURC or the Board of Environmental Protection),
3. independent state commissions (e.g., the PUC, Human Rights Commission),
4. bonding and financing quasi-independent agencies (e.g., MSHA and FAME), and
5. various other boards and commissions (e.g., Board of Real Estate Appraisers, Trustees of the University System, Maine Labor Relations Board, Land For Maine's Future Board, ConnectME Advisory Council).

In 5 MRSA Ch. 379 are listed some 260 governmental boards and commissions (not including state agencies) of various types.

Attached is a sampling of types of entities that might serve as useful models for an entity to house energy efficiency responsibilities. Picking entities is a somewhat subjective exercise and the appropriateness of a model depends on what sorts of powers would be housed in the entity.

Attachments

C: Members, Joint Select Committee on Maine's Energy Future

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³ See 1 MRSA §434.

MAINE'S ENERGY FUTURE
CHOICE OF ENTITIES – EXAMPLES OF VARIOUS TYPES OTHER THAN DEPARTMENTS

ENTITY	CITE	Authority	Governance	legal status detail
LURC ¹	12 §683	<ul style="list-style-type: none"> land use regulation 	<ul style="list-style-type: none"> 7 members appointed by Gov./legis confirm for 4-year terms Staff: Comm. of DOC appoints, subject to approval of LURC, a director to oversee operations 	<p>Commission located within DOC</p> <ul style="list-style-type: none"> employees: state employees under Civil Service Law budget: line categories FOA: subject to FOA immunities: governed by Tort Claims Act APA: conducts proceedings and adopts rules pursuant to APA conflict of interest: governed by general provisions (5 MRSA 18, 18-A and 19; 17 MRSA 3104)
Dirigo Health	24-A §6902	<ul style="list-style-type: none"> arrange provision of health coverage 	<ul style="list-style-type: none"> 9 voting members appointed by Gov./legis confirm for 3-year terms plus 4 ex officio agency heads hires own staff 	<p>independent executive agency performing essential governmental functions</p> <ul style="list-style-type: none"> employees: state employees under Civil Service Law budget: line categories FOA: subject to FOA with specific exceptions immunities: board member liability governed by trustee liability under 18-B §1010; employee complete immunity when acting in scope of employment APA: adopts rules pursuant to APA conflict of interest: special provisions apply (24-A §6906)
Land For Maine's Future	5 §6202	<ul style="list-style-type: none"> administer land acquisition program (administers GO bond proceeds) 	<ul style="list-style-type: none"> 11 member board: 6 appointed by Gov./legis. confirm for 4-yr terms, 5 ex officio (DOC, IFW, DMR, AFRR, SPO) staffed by SPO 	<p>Executive Department board</p> <ul style="list-style-type: none"> employees: state employees (SPO) budget: line categories FOA: subject to FOA immunities: governed by Tort Claims Act APA: adopts rules pursuant to APA conflict of interest: governed by general provisions (5 MRSA 18, 18-A and 19; 17 MRSA 3104)

¹ Similar entities include Board of Pesticides Control within Dept. of Agriculture

MAINE'S ENERGY FUTURE
CHOICE OF ENTITIES – EXAMPLES OF VARIOUS TYPES OTHER THAN DEPARTMENTS

ENTITY	CITE	Authority	Governance	legal status detail
PUC	35-A § 103	<ul style="list-style-type: none"> regulate utilities administer various programs/funds² 	<ul style="list-style-type: none"> 3 commissioners appointed by Gov./legis confirm for staggered 6-yr terms Appoints own staff 	<p>independent state commission</p> <ul style="list-style-type: none"> employees: state employees with some specific status provisions budget: line categories FOA: subject to FOA with various clearly defined exceptions immunities: governed by Tort Claims Act APA: adopts rules and conducts proceedings pursuant to APA conflict of interest: in addition to 5 MRSA 18, specific additional restrictions apply (35-A §109)
MSHA ³	30-A §4722	<ul style="list-style-type: none"> administer various housing-related programs/funds revenue bonding 	<ul style="list-style-type: none"> 9-member voting board: 8 appointed by Gov./legis confirm, 1 ex officio (State Treasurer) Director, appointed by Gov./legis. confirm. (also serves as non-voting 10th member of board), appoints staff 	<p>public body corporate and politic, instrumentality of state exercising essential governmental functions</p> <ul style="list-style-type: none"> employees: not subject to state civil service law budget: grant FOA: subject to FOA with records specific exceptions (§4706) immunities: governed by Tort Claims Act APA: adopts rules pursuant to APA conflict of interest: in addition to 5 MRSA 18, specific additional restrictions apply (30-A §4724)

² For instance Dig Safe, E911 and Efficiency ME

³ Similar entities include FAME, Maine Municipal Bond Bank, Maine Health and Higher Education Facilities Authority, Maine Governmental Facilities Authority and Maine Educational Loan Authority.

MAINE'S ENERGY FUTURE
CHOICE OF ENTITIES – EXAMPLES OF VARIOUS TYPES OTHER THAN DEPARTMENTS

ENTITY	CITE	Authority	Governance	legal status detail
Small Enterprise Growth Board	10 §384	<ul style="list-style-type: none"> Venture capital fund 	<ul style="list-style-type: none"> 11 member board: 10 appointed by Gov to 2-yr terms, 1 ex officio (DECED) various entities to provide support (Univ. ME, ME World Trade Assoc. etc.) 	<p>public body corporate and politic, instrumentality of state exercising essential governmental functions</p> <ul style="list-style-type: none"> employees: none specified in law budget: no fiscal data maintained by Bureau of Budget FOA: subject to FOA with specific records exceptions immunities: probably governed by Tort Claims Act APA: adopts rules pursuant to APA conflict of interest: subject to 5 MRSA 18, not subject to 17 MRSA 3104; special provisions apply (10 MRSA §390)
Maine Technology Institute	5 §15301	<ul style="list-style-type: none"> support technology R&D 	<ul style="list-style-type: none"> 13 voting members: 10 appointed by Governor for 3-year terms, 3 ex officio (DECED, Comm. College, U. ME); 2 non-voting members: <ul style="list-style-type: none"> Director/President appointed by Gov./legis confirm, reports to commissioner of DECED 	<p>nonprofit corporation with public and charitable purposes within IRS Code 501(c)(3)⁴ -- expressly may not create any liabilities for state</p> <ul style="list-style-type: none"> employees: not state employees budget: no fiscal data maintained by Bureau of Budget FOA: subject to FOA, with specific records exceptions immunities: (status not clear) employees required to be bonded APA: has no rulemaking, licensing or adjudicatory powers conflict of interest: special provisions apply (5 §15307)

⁴ Though the law provides that the MTI can establish profit sharing plans for its employees (5 MRSA §15304(13)).

CHOICE OF ENTITY
EXAMPLES OF ENTITIES
(STATE ANNUAL REPORT DATA 2007-08)

MAINE LAND USE REGULATION COMMISSION

Reference: Policy Area: 04 ; Umbrella: 04 ; Unit: 061 ; Citation: T0012 M.R.S.A., Sect.
000000683

Average Count--All Positions: 26.500

Legislative Count: 26.50

FINANCES, FISCAL YEAR 2008: The expenditure information for this unit was generated from the Budget and Financial Management System (BFMS).

MAINE LAND USE REGULATION COMMISSION	TOTAL FOR ALL FUNDS	GENERAL FUND	SPECIAL REVENUE FUNDS	HIGHWAY FUND	FEDERAL FUNDS	MISC FUNDS
EXPENDITURES						
SALARIES & WAGES	1,200,472	1,127,839	72,633			
HEALTH BENEFITS	471,875	449,085	22,790			
RETIREMENTS	204,348	193,978	10,370			
OTHER FRINGE BENEFITS	21,613	20,388	1,225			
COMPUTER SERVICES	7,117	7,117				
CONTRACTUAL SERVICES	719,926	152,936	566,990			
RENTS	119,994	67,068	52,926			
COMMODITIES	39,597	37,416	2,181			
TRANSFER TO OTHER FUNDS	40,123		40,123			
TOTAL EXPENDITURES	2,825,065	2,055,827	769,238			

DIRIGO HEALTH

Reference: Policy Area: 05 ; Umbrella: 95 ; Unit: 629 ; Citation: T0024A M.R.S.A., Sect.
000006901

Average Count--All Positions: 14.000

Legislative Count: 14.00

FINANCES, FISCAL YEAR 2008: The expenditure information for this unit was generated from the Budget and Financial Management System (BFMS).

DIRIGO HEALTH	TOTAL FOR ALL FUNDS	GENERAL FUND	SPECIAL REVENUE FUNDS	HIGHWAY FUND	FEDERAL FUNDS	MISC FUNDS
EXPENDITURES						
SALARIES & WAGES	722,464					722,464
HEALTH BENEFITS	179,218					179,218
RETIREMENTS	104,429					104,429
OTHER FRINGE BENEFITS	13,747					13,747
COMPUTER SERVICES	70,942					70,942
CONTRACTUAL SERVICES	2,223,442					2,223,442
RENTS	112,908					112,908
COMMODITIES	6,690					6,690
GRANTS, SUBSIDIES, PENSIONS	74,186,730					74,186,730
TRANSFER TO OTHER FUNDS	33,465					33,465
TOTAL EXPENDITURES	77,654,035					77,654,035

CHOICE OF ENTITY
EXAMPLES OF ENTITIES
(STATE ANNUAL REPORT DATA 2007-08)

LAND FOR MAINE'S FUTURE BOARD

Reference: Policy Area: 00 ; Umbrella: 07 ; Unit: 113 ; Citation: T0005 M.R.S.A., Sect. 000006202

Average Count--All Positions: 1.000

Legislative Count: 1.00

FINANCES, FISCAL YEAR 2008: The expenditure information for this unit was generated from the Budget and Financial Management System (BFMS).

LAND FOR MAINE'S FUTURE BOARD	TOTAL FOR ALL FUNDS	GENERAL FUND	SPECIAL REVENUE FUNDS	HIGHWAY FUND	FEDERAL FUNDS	MISC FUNDS
EXPENDITURES						
SALARIES & WAGES	51,016	51,016				
HEALTH BENEFITS	15,370	15,370				
RETIREMENTS	8,559	8,559				
OTHER FRINGE BENEFITS	1,681	1,681				
CONTRACTUAL SERVICES	3,687	1,520	2,167			
RENTS	309	309				
COMMODITIES	748	748				
PURCHASE OF LAND	7,183,586		1,712			7,181,874
TRANSFER TO OTHER FUNDS	234		234			
TOTAL EXPENDITURES	7,265,190	79,203	4,113			7,181,874

PUBLIC UTILITIES COMMISSION

Reference: Policy Area: 07 ; Umbrella: 65 ; Unit: 407 ; Citation: T0035A M.R.S.A., Sect. 000000103

Average Count--All Positions: 76.750

Legislative Count: 76.50

Units: *EMERGENCY SERVICES COMMUNICATION BUREAU E-9-1-1 COUNCIL*

FINANCES, FISCAL YEAR 2008: The expenditure information for this unit was generated from the Budget and Financial Management System (BFMS).

DEPARTMENT SUMMARY	TOTAL FOR ALL FUNDS	GENERAL FUND	SPECIAL REVENUE FUNDS	HIGHWAY FUND	FEDERAL FUNDS	MISC FUNDS
EXPENDITURES						
SALARIES & WAGES	4,151,851		4,029,898		121,953	
HEALTH BENEFITS	1,203,054		1,169,239		33,815	
RETIREMENTS	824,721		805,923		18,798	
OTHER FRINGE BENEFITS	73,139		70,815		2,324	
COMPUTER SERVICES	197,269		189,346		7,923	
CONTRACTUAL SERVICES	16,441,907		16,289,863		152,044	
RENTS	38,812		32,633		6,179	
COMMODITIES	54,512		51,278		3,234	
GRANTS, SUBSIDIES, PENSIONS	7,728,269		7,602,440		125,829	
EQUIPMENT	5,600				5,600	
TRANSFER TO OTHER FUNDS	449,286		439,251		10,035	
TOTAL EXPENDITURES	31,168,420		30,680,686		487,734	

CHOICE OF ENTITY
EXAMPLES OF ENTITIES
(STATE ANNUAL REPORT DATA 2007-08)

MAINE STATE HOUSING AUTHORITY

Reference: Policy Area: 01 ; Umbrella: 99 ; Unit: 346 ; Citation: T0030A M.R.S.A., Sect. 000004722

FINANCES, FISCAL YEAR 2008: The expenditure information for this unit was generated from the Budget and Financial Management System (BFMS).

MAINE STATE HOUSING AUTHORITY	TOTAL FOR ALL FUNDS	GENERAL FUND	SPECIAL REVENUE FUNDS	HIGHWAY FUND	FEDERAL FUNDS	MISC FUNDS
EXPENDITURES						
GRANTS, SUBSIDIES, PENSIONS	7,943,376	437,570	7,505,806			
TOTAL EXPENDITURES	7,943,376	437,570	7,505,806			

MAINE RURAL DEVELOPMENT AUTHORITY

Reference: Policy Area: 01 ; Umbrella: 99 ; Unit: 626 ; Citation: T0005 M.R.S.A., Sect. 000013120A

FINANCES, FISCAL YEAR 2008: The expenditure information for this unit was generated from the Budget and Financial Management System (BFMS).

MAINE RURAL DEVELOPMENT AUTHORITY	TOTAL FOR ALL FUNDS	GENERAL FUND	SPECIAL REVENUE FUNDS	HIGHWAY FUND	FEDERAL FUNDS	MISC FUNDS
EXPENDITURES						
GRANTS, SUBSIDIES, PENSIONS	500,000					500,000
TOTAL EXPENDITURES	500,000					500,000

SMALL ENTERPRISE GROWTH BOARD

Reference: Policy Area: 01 ; Umbrella: 95 ; Unit: 592 ; Citation: T0010 M.R.S.A., Sect. 000000384

FINANCES, FISCAL YEAR 2008: The Bureau of the Budget does not maintain comprehensive fiscal data relative to this unit.

MAINE TECHNOLOGY INSTITUTE

Reference: Policy Area: 01 ; Umbrella: 94 ; Unit: 611 ; Citation: T0005 M.R.S.A., Sect. 000015302

FINANCES, FISCAL YEAR 2008: The Bureau of the Budget does not maintain comprehensive fiscal data relative to this unit.

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Examples of board membership

1. LURC

12 MRSA §103 (excerpt): The commission consists of 7 public members, none of whom may be state employees, who must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over conservation matters and to confirmation by the Legislature, for staggered 4-year terms. Appointees to the commission must be familiar with the needs and issues affecting the commission's jurisdiction. All appointees must reside in the commission's jurisdiction; work in the commission's jurisdiction; be a former resident or be retired after working within the commission's jurisdiction for a minimum of 5 years; or have expertise in commerce and industry, fisheries and wildlife, forestry or conservation issues as they affect the commission's jurisdiction. In selecting appointees, the Governor shall actively seek and give consideration to persons residing in or near the unorganized areas of the State and to persons residing on unorganized coastal islands. At least 2 members must be residents within the commission's jurisdiction. A county commissioner, county employee, municipal official or municipal employee is not considered to hold an incompatible office for purposes of simultaneous service on the commission. If a county or municipality is a participant in an adjudicatory proceeding before the commission, a commissioner, official or employee from that county or municipality may not participate in that proceeding.

2. PUC

35-A MRSA §105 (excerpt): The Governor shall appoint 3 members to the Public Utilities Commission. The appointments shall be subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities and to confirmation by the Legislature. Members of the commission shall devote full time to their duties.

The commissioners shall serve for terms of 6 years.

3. FAME

10 MRSA §965.

Membership. There shall be 15 voting members of the authority as follows.

Designated members. Three members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over economic development and subject to confirmation by the Legislature shall consist of:

- A. One member who is a certified public accountant;
- B. One member who is an attorney; and
- C. One member who is a commercial banker.

At-large members. Nine members appointed by the Governor in accordance with the following and subject to review by the joint standing committee of the Legislature having jurisdiction over economic development matters and subject to confirmation by the Legislature must be appointed from at large.

- A. Two of the at-large members must be veterans.

Examples of board membership

- B. Two of the at-large members must be knowledgeable in the field of natural resource enterprises or financing.
- C. One of the at-large members must be knowledgeable in the field of student financial assistance.
- D. One of the at-large members must be knowledgeable in the field of higher education.

State members. Three members of the authority shall represent the State and shall consist of:

- A. The Commissioner of Economic and Community Development or the commissioner's designee;
- B. One natural resources commissioner designated by the Governor from either the Department of Agriculture, Food and Rural Resources; the Department of Conservation; or the Department of Marine Resources; and
- C. The Treasurer of State, ex officio.

Director; serving on more than one board. With the exception of a member serving in an ex officio capacity pursuant to subsection 4, a member may not serve at the same time as a director or officer of the Maine Educational Loan Authority, of any nonprofit corporation formed pursuant to the former Title 20, section 2237 and Title 20-A, section 11407 or of any entity that has a contract to provide a significant level of administrative services to the authority, to the Maine Educational Loan Authority or to any nonprofit corporation formed pursuant to the former Title 20, section 2237 and Title 20-A, section 11407.

4. MMBB

30-A MRSA 5951 (excerpt):

The bank shall consist of a board of 5 commissioners, including:

- A. The Treasurer of State who serves as a commissioner ex officio;
 - (1) The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State;
- B. The Superintendent of Financial Institutions, who also serves as a commissioner ex officio.
 - (1) The Superintendent of Financial Institutions may designate a deputy superintendent to serve in place of the Superintendent of Financial Institutions; and
- C. Three commissioners, who must be residents of the State, appointed by the Governor for terms of 3 years.

Before entering upon their duties all commissioners shall take and subscribe to an oath to perform the duties of office faithfully, impartially and justly to the best of their abilities. A record of these oaths shall be filed in the office of the Secretary of State.

Examples of board membership

Terms; vacancy; removal. Each commissioner shall hold office for the term of appointment and until a successor has been appointed and has qualified. A commissioner may be reappointed. Any vacancy occurring other than by the expiration of a term shall be filled by appointment for the unexpired term. The Governor may remove a commissioner from office for cause after a public hearing. The Governor may suspend a commissioner pending the completion of this hearing.

Officers of board; exercise of powers. The board of commissioners shall elect one of its members as chairman, one as vice-chairman and shall appoint an executive director who shall also serve as both secretary and treasurer. The powers of the bank are vested in the commissioners of the bank in office from time to time. Three commissioners of the bank constitutes a quorum at any meeting of the commissioners. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank does not impair the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.

5. MSHA

30-A MRSA § 4723(2)(B) (excerpt):

The Maine State Housing Authority, as authorized by Title 5, chapter 379, must have 10 commissioners, 8 of whom must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development and to confirmation by the Legislature. The 9th commissioner is the Treasurer of State who serves as an ex officio voting member. The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State. The 10th commissioner is the director of the Maine State Housing Authority who serves as an ex officio nonvoting member. At least 3 gubernatorial appointments must include a representative of bankers, a representative of elderly people and a resident of housing that is subsidized or assisted by programs of the United States Department of Housing and Urban Development or of the Maine State Housing Authority. In appointing the resident, the Governor shall give priority consideration to nominations that may be made by tenant associations established in the State. Of the 5 remaining gubernatorial appointments, the Governor shall give priority to a representative involved in the housing business and a representative of people with disabilities.

The Governor shall appoint the chair of the commissioners from among the 8 gubernatorial appointments. The chair serves as a nonvoting member, except that the chair may vote only to break a tie. The commissioners shall elect a vice-chair of the commissioners from among their number.

6. MTI

5 MRSA 15302 (excerpt):

3. Board of Directors of the Maine Technology Institute. The institute is governed and all of its powers exercised by a board of directors, referred to in this chapter as the "board," consisting of 13 voting members and 2 nonvoting members.

A. The Governor shall appoint 10 voting directors, 8 of whom must be representatives of targeted technologies. The other 2 directors must have demonstrated significant experience in finance, lending or venture capital. In making the appointments from targeted technologies, the Governor shall consider recommendations submitted by representatives of targeted technology sectors. Directors of the board

Examples of board membership

appointed by the Governor are entitled to receive reimbursement at the legislative rate for necessary expenses for their attendance at authorized meetings of the board.

B. The Commissioner of Economic and Community Development or the commissioner's designee, the President of the Maine Community College System or the president's designee and the Chancellor of the University of Maine System or the chancellor's designee are ex officio voting directors.

C. The Director of the State Planning Office or the director's designee is an ex officio nonvoting director.

D. The Maine Technology Institute Director is a nonvoting director.

4. Terms. Directors of the board appointed by the Governor are appointed for 3-year terms. The terms of the initial appointments are staggered as follows: Three are one-year terms, 3 are 2-year terms and 3 are 3-year terms. Those directors may serve no more than 2 consecutive terms. Directors who serve on the board by virtue of their offices serve terms coincident with their terms in office.

CONFLICT OF INTEREST LAWS

2. Prohibition. An executive employee may not have any direct or indirect pecuniary interest in or receive or be eligible to receive, directly or indirectly, any benefit that may arise from any contract made on behalf of the State when the state entity that employs the executive employee is a party to the contract.

3. Violative contract void. Any contract made in violation of this section is void.

4. Exemptions. This section does not apply:

- A. To purchases by the Governor under authority of Title 1, section 814;
- B. To contracts made with a corporation that has issued shares to the public for the general benefit of that corporation; or
- C. If an exemption is approved by the Director of the Bureau of General Services within the Department of Administrative and Financial Services or the director's designee based upon one of the following and if the director gives notice of the granting of this exemption to all parties bidding on the contract in question with a statement of the reason for the exemption and if an opportunity is provided for any party to appeal the granting of the exemption:
 - (1) When the private entity or party that proposes to contract with the State and that employs the executive employee, based upon all relevant facts, is the only reasonably available source to provide the service or product to the State, as determined by the director; or
 - (2) When the director determines that the amount of compensation to be paid to the private entity or party providing the service or product to the State is de minimis.

§19. Financial disclosure by executive employees

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

- A. "Appointed executive employee" means a compensated member of the classified or unclassified service employed by the Executive Branch, who is appointed by the Governor and confirmed by the Legislature, or who serves in a major policy-influencing position, except assistant attorneys general, as set forth in chapter 71.
- B. "Constitutional officers" means the Governor, Attorney General, Secretary of State and Treasurer of State.
- C. "Elected executive employee" means the constitutional officers and the State Auditor.
- D. "Executive employee" means an appointed executive employee or an elected executive employee.
- E. "Gift" means anything of value, including forgiveness of an obligation or debt, given to a person without that person providing equal or greater consideration to the giver. "Gift" does not include:
 - (1) Gifts received from a single source during the reporting period with an aggregate value of \$300 or less;
 - (2) A bequest or other form of inheritance; and
 - (3) A gift received from a relative.
- F. "Honorarium" means a payment of money or anything with a monetary resale value to a person for an appearance or a speech by the person. "Honorarium" does not include reimbursement for actual and

CONFLICT OF INTEREST LAWS

necessary travel expenses for an appearance or speech. "Honorarium" does not include a payment for an appearance or a speech that is unrelated to the person's official capacity or duties.

G. "Immediate family" means a person's spouse or dependent children.

H. "Income" means economic gain to a person from any source, including, but not limited to, compensation for services, including fees, commissions and payments in-kind; income derived from business; gains derived from dealings in property, rents and royalties; income from investments including interest, capital gains and dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; prizes; and grants, but does not include gifts. Income received in-kind includes, but is not limited to, the transfer of property and options to buy or lease and stock certificates. Income does not include alimony and separate maintenance payments.

I. "Relative" means an individual who is related to the executive employee or the executive employee's spouse as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister, and shall be deemed to include the fiancé or fiancée of the executive employee.

I-1. "Reportable liabilities" means any unsecured loan, except a loan made as a campaign contribution recorded as required by law, of \$3,000 or more received from a person not a relative. Reportable liabilities do not include:

(1) A credit card liability;

(2) An educational loan made or guaranteed by a governmental entity, educational institution or nonprofit organization; or

(3) A loan made from a state or federally regulated financial institution for business purposes.

J. "Self-employed" means that the person qualifies as an independent contractor under Title 39-A, section 102, subsection 13.

2. Statement of sources of income. Each executive employee shall annually file with the Commission on Governmental Ethics and Election Practices a sworn and notarized statement of finances for the preceding calendar year. The statement must indicate:

A. If the executive employee is an employee of another person, firm, corporation, association or organization, the name and address of the employer and each other source of income of \$1,000 or more;

B. If the executive employee is self-employed, the name and address of the executive employee's business and the name of each source of income derived from self-employment that represents more than 10% of the employee's gross income or \$1,000, whichever is greater, except that, if this form of disclosure is prohibited by statute, rule or an established code of professional ethics, the employee shall specify the principal type of economic activity from which the income is derived. With respect to all other sources of income, a self-employed executive employee shall name each source of income of \$1,000 or more. The employee shall also indicate major areas of economic activity and, if associated with a partnership, firm, professional association or similar business entity, the major areas of economic activity of that entity;

C. The specific source of each gift received;

D. The type of economic activity representing each source of income of \$1,000 or more that any member of the immediate family of the executive employee received and the name of the spouse or domestic partner of the executive employee. The disclosure must include the job title of the executive employee and immediate family members if the source of income is derived from employment or compensation;

E. The name of each source of honoraria that the executive employee accepted;

CONFLICT OF INTEREST LAWS

A. No former executive employee may knowingly act as an agent or attorney for, or appear personally before, a state or quasi-state agency for anyone other than the State for a one-year period following termination of the employee's employment with the agency or quasi-state agency in connection with a proceeding in which the specific issue was pending before the executive employee's agency and was directly within the responsibilities of the employee during a period terminating at least 12 months prior to the termination of that employee's employment.

B. No former executive employee may knowingly act as an agent or attorney for, or appear personally before, a state or quasi-state agency for anyone other than the State at any time following termination of the employee's employment with the agency or quasi-state agency in connection with a proceeding in which the specific issue was pending before the executive employee's agency and was directly within the responsibilities of the executive employee during the 12-month period immediately preceding the termination of the employee's employment.

4. Construction of section. This section may not be construed to prohibit former state employees from doing personal business with the State. This section shall not limit the application of any provisions of Title 17-A, chapter 25.

5. Penalty. A violation of this section is a civil violation for which a forfeiture of not more than \$1,000 may be adjudged.

6. Application of more stringent statutory provisions. If other statutory conflict of interest provisions pertaining to any state agency, quasi-state agency or state board are more stringent than the provisions in this section, the more stringent provisions shall apply.

7. Avoidance of appearance of conflict of interest. Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and subsection 8, "conflict of interest" includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

8. Disclosure of conflict of interest. An executive employee shall disclose immediately to that employee's direct supervisor any conflict of interest within the meaning of this section.

§18-A. Conflict of interest; contract with the State

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "State entity" means any office, department, agency, authority, commission, board, institution, hospital or other instrumentality of the State.

B. "Executive employee" has the same meaning as set forth in section 19, subsection 1, paragraph D except that "executive employee" includes employees of and members serving with the National Guard and employees of the University of Maine System, the Maine Maritime Academy and the state community colleges.

CONFLICT OF INTEREST LAWS

5 §18. Disqualification of executive employees from participation in certain matters

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

- A. "Constitutional officers" means the Attorney General, Secretary of State and Treasurer of State.
- B. "Executive employee" means the constitutional officers, the State Auditor, members of the state boards and commissions as defined in chapter 379 and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:
 - (1) The Governor;
 - (2) Employees of and members serving with the National Guard;
 - (3) Employees of the University of Maine System, the Maine Maritime Academy and state community colleges;
 - (4) Employees who are employees solely by their appointment to an advisory body;
 - (5) Members of boards listed in chapter 379, who are required by law to represent a specific interest, except as otherwise provided by law; and
 - (6) Members of advisory boards as listed in chapter 379.
- C. "Participate in his official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds.
- D. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction.
- E. "Participates in the legislative process" means to provide any information concerning pending legislation to a legislative committee, subcommittee or study or working group, whether orally or in writing.

2. Executive employee. An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

- A. Himself, his spouse or his dependent children;
- B. His partners;
- C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment;
- D. An organization in which he has a direct and substantial financial interest; or
- E. Any person with whom the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22-A, during the preceding year.

2-A. Participation in legislative process. An executive employee commits a civil violation if the employee participates in the legislative process in the employee's official capacity concerning any legislation in which any person described in subsection 2, paragraphs A to E has any direct and substantial financial interest unless the employee discloses that interest at the time of the employee's participation.

3. Former executive employee. Former executive employees shall be subject to the provisions in this subsection with respect to proceedings in which the State is a party or has a direct and substantial interest.

CONFLICT OF INTEREST LAWS

F. Each executive branch agency before which the executive employee or any immediate family member has represented or assisted others for compensation; and

G. Each executive branch agency to which the executive employee or the employee's immediate family has sold goods or services with a value in excess of \$1,000.

In identifying the source of income, it is sufficient to identify the name and address and principal type of economic activity of the corporation, professional association, partnership, financial institution, nonprofit organization or other entity or person directly providing the income to the individual.

With respect to income from a law practice, it is sufficient for attorneys-at-law to indicate their major areas of practice and, if associated with a law firm, the major areas of practice of the firm.

2-A. Statement of interests. Beginning in 2010, each executive employee shall annually file with the Commission on Governmental Ethics and Election Practices a sworn and notarized statement of those positions set forth in this subsection for the preceding calendar year. The statement must include:

A. Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by the executive employee with any for-profit or nonprofit firm, corporation, association, partnership or business; and

B. Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by a member of the immediate family of the executive employee with any for-profit or nonprofit firm, corporation, association, partnership or business and the name of that member of the executive employee's immediate family.

3. Time for filing.

A. An elected executive employee shall file an initial report within 30 days of his election. An appointed executive employee shall file an initial report prior to confirmation by the Legislature.

B. Each executive employee shall file the annual report prior to the close of the 2nd week in April, unless that employee has filed an initial or updating report during the preceding 30 days; except that, if an elected or appointed executive employee has already filed a report for the preceding calendar year pursuant to paragraph A, a report does not need to be filed.

C. Each executive employee whose income substantially changes shall file a report of that change within 30 days of it.

4. Penalties. Failing to file the statement within 15 days of having been notified by the Commission on Governmental Ethics and Election Practices of failing to meet the requirements of subsection 2 is a civil violation for which a fine of not more than \$100 may be adjudged.

5. Rules. The Commission on Governmental Ethics and Election Practices may adopt or amend rules to specify the reportable categories or types and the procedures and forms for reporting and to administer this section.

6. Public record. Statements filed under this section are public records. The Commission on Governmental Ethics and Election Practices shall publish on a publicly accessible website the completed forms of executive employees filed under this section.

CONFLICT OF INTEREST LAWS

7. Disclosure of reportable liabilities. Each executive employee shall include on the statement of income under subsection 2 all reportable liabilities incurred while employed as an executive employee. The executive employee shall file a supplementary statement with the Secretary of State of any reportable liability within 30 days after it is incurred. The report must identify the creditor in the manner of subsection 2.

17 §3104. Conflicts of interest; purchases by the State

No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the State shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the State or of the institution in which he holds such place of trust, and any contract made in violation hereof is void. This section shall not apply to purchases of the State by the Governor under authority of Title 1, section 814.

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 6 April 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 886, An Act to Secure Maine's Energy Future**

BILL SUMMARY

This bill establishes a new entity, the Efficiency Maine Trust (EMT) responsible for planning, designing and administering energy efficiency programs

- The EMT is designated as a nonprofit, 501(c)(3) charitable organization (p. 12, line 13) that is an “independent fiscal agent for public investments” and “not a state entity” (p. 14, lines 29-30). The EMT has the authority to adopt governmental rules having the force of law (p.20, lines 1-18).
- The EMT is governed by a 16 member board, 12 of whom are voting members:
 - 12 voting members:
 - 9 members appointed by the PUC
 - 3 with relevant expertise (p. 13, lines 9-29).
 - 6 representing various interests (commercial, industrial, small business, residential, low-income, environmental)
 - 3 members appointed by the Governor
 - representatives of DEP, OEIS and MSHA
 - 4 nonvoting members appointed by the Governor
 - Representatives of electric utilities (*NOTE” should be T&D*), natural gas utilities and heating fuel industry
- An affirmative vote of 2/3 of the voting members (8) is required to take any action (p. 14, line 8).
- The board appoints a director, who serves at the pleasure of the board, who manages the EMT programs, hires staff and establishes an office “outside state government” (p. 14, lines 13-27).
- The EMT fixes compensation of all employees (p. 15, line 34-35).
- The EMT is not subject to State Purchasing Agent competitive bidding rules that apply to State agencies in selecting service providers (p. 19, lines 36-40).

NOTE: *As drafted, legal status of the EMT is ambiguous, e.g., it is described at p. 14, line 30 as “not a state entity”, but it has responsibility for administering and overseeing state energy programs and state funds and has the power to adopt rules having the force of law. Key status issues that it would be useful clarify include:*

- *Conflict of interest standards (EMT would apparently not be subject to state conflict of interest laws that apply to state entities, e.g., 5 MRSA 18)*
- *Is EMT subject to the Freedom of Access Law?*
 - *language on p. 16, lines 1-4 appears to suggest EMT is subject to FOA, but that the PUC can order that certain proprietary information remain confidential (apparently a reference to the PUC's power to issue protective orders in proceedings under 35-A, §1311-A)*
- *Is it a governmental entity entitled to sovereign immunity and governed by the Tort Claims Act?*
- *Can EMT create liabilities for the State through its actions?*
- *Are EMT employees state employees? (see p. 19, lines 34-35)*
- *Should it have the authority to adopt rules having the force of law (under bill it would (p.20, lines 1-18)?*

NOTE: *Status of EMT funds should be clarified. The bill suggests all funds deposited with the trust (federal funds, T&D SBC, natural gas DSM funds and the heating fuel charge) are “not state funds” (p. 14, line 31). It is unclear what this means. They are public funds collected through government assessments for public purposes. If the intent is to “protect” them from reallocation by future legislatures, the only means to that end would be a constitutional amendment providing some protection. The various EMT funds are established and treated in various ways under the bill; here is a listing with any issues that should be addressed:*

- *electric DSM program funds (p. 6 lines 4- 28 and p. 7 lines 6-14)*
 - *current language of law is clear as to use and status of funds*
 - *reference to the program fund as “subaccount within the trust” is not clear (there is no overall trust account established).*
- *transfers of funds from a natural gas utility to EMT (p. 10, lines 15-18 and p. 19, lines 20-21); status of this “account” in EMT, unclear*
 - *use of the funds is not clearly specified (PUC can direct funds be paid to an EMT subaccount “authorized to be disbursed consistent with the trusts’ comprehensive triennial plan” – can they be used for non-gas-related DSM?)*
 - *Funds non-lapsing?*
 - *May funds be invested and does interest remain in the funds?*
- *heating fuels fund (p. 23, line 16)*
 - *use of funds clear (starting at p. 24, lines 32)*
 - *status of funds not clear: are funds nonlapsing? may funds be invested and does interest remain in funds?*
- *MSHA bond funds (p. 24 lines 22-24 and p. 19 lines 24-25).*
 - *p. 24 line 24 indicates the proceeds go to a revolving loan fund that is not actually established, so its specific use and status is unclear*
 - *p. 19, lines 24-25 indicates the proceeds go to an EMT subaccount for “energy efficiency and weatherization.”*
 - *These 2 need to be harmonized and the status of the fund or funds clarified*
- *RGGI funds (p. 19, line 27 and starting at p. 20 line 38)*

- *preserves main features of current language of law which is clear as to use and status of funds*
- *“Any other source” account (p. 19, lines 28-31)*
 - *sources mentioned, include “civil penalties” and alternative compliance payments – may want to examine*
 - *use and status not clear*
- *Administrative funds and expenditures:*
 - *electric DSM administrative fund (p. 7, lines 6-14) (9% of SBC and 1% of program fund available to EMT)*
 - *status clear under current law*
 - *RGGI trust fund use for administrative costs (p. 22, line 23) (5% of trust fund available to EMT, DEP and AG)*
 - *status clear under current law*
 - *heating fuel fund administrative costs (p. 25, line 11-12) (proportionate share of fund can be used for EMT administrative costs)*
 - *further clarity needed?*
 - *Use of natural gas funds or bond revenues for administrative costs unclear*
- Provides for certain oversight of the EMT by the PUC:
 - EMT programs must be in accordance with a triennial plan created by EMT and approved by the PUC.
 - The PUC “negotiates” and approves performance measures governing the EMT
 - The PUC arranges for an independent evaluation of major programs (over \$500,000/year) at least once every 3 years
 - Each year the EMT is required report to the PUC and the UTE committee an accounting of its activities, funding and expenditures (p. 17, line 27 to p. 18 line 35).
 - The PUC is directed to establish a fund to defray its costs in overseeing the EMT

NOTE: *Provision on p. 6 lines 15-21 duplicates provision on p. 27 lines 6-17. Provision on p. 6 (which is in the law governing the electric DSM program) seems unnecessary and ambiguous (since it relates to the PUC’s overall duties with regard to the EMT and not just oversight of the electric DSM program). Neither provision specifies how much funding is available to the PUC: PUC is directed to set aside some amount from each EMT funding source (including federal funds) “in proportion to each source’s total funding level”.*

NOTE: *EMT not a public utility, so PUC’s role and authority with respect to overseeing EMT is not fully clear. For instance, if the PUC finds EMT is mishandling funds or not meeting performance measures, does the PUC need to be given some authority to address the problem?*

- Under the bill, the oversight or administration of the following programs is given to Efficiency Maine Trust:

1. Electric conservation and efficiency (DSM) programs currently under the jurisdiction of the Public Utilities Commission (Title 35-A, section 3211-A).

NOTE: *Transition language may be necessary to ensure existing contracts and obligations are transferred from the PUC to EMT.*

NOTE: *Not clear how quickly the new EMT will be able to be up and running and actually able to operate programs (public members of board appointed and confirmed, administrator hired, office established, competent staff in place, programs developed, rules adopted etc.) May need to provide a bridge of some sort from current paradigm to the new paradigm.*

Certain aspects of the law governing these programs changed:

- Removes legislative approval process for setting the SBC on T&Ds.
 - Currently, the PUC must submit a recommended SBC as part of its budget submission to the UTE committee and legislature approves through the budget allocation process
- Allows the PUC to apply for and receive grants to support “complementary energy programs” (education and interagency information sharing programs – e.g., support for the Energy Resources Council)
- Changes funding for administrative costs: currently the administrative fund is capped at \$1.3 million; under the bill this is changed to a cap of 9% of the total annual SBC collection.¹

2. Natural gas conservation and efficiency programs (Title 35-A, section 4711);

Certain aspects of the law governing the programs changed:

- All nat. gas utilities would be required to participate (currently only the largest utility, Unitil, formerly Northern Utilities, is required to participate)
- Replaces current funding floor for utility of 3% of delivery revenues with a requirement that all available cost effective, reliable and feasible DSM that costs less than supply be implemented
- Provides that the PUC can direct that funds be collected and directed to the EMT to be disbursed consistent with the EMT’s triennial plan.

NOTE: *This language (p. 10, lines 15-18) seems to suggest that rather than the utility implementing programs (which is how the current law is structured; also, p. 16, lines 6-17 also seem to suggest that the utility will be implementing the programs), the PUC would assess a SBC and the EMT would administer appropriate DSM programs. If this is the intent,*

¹ Also, currently 1% of the program fund can be used to fund the admin. costs of the Maine Energy Conservation Board; the bill eliminates the board and provides that the same amount can be used to support the admin. costs of the EMT.

the language could be clarified as to who is responsible for administering the programs.

- Prohibits a natural gas utility from recovering these program expenditures in its rates until the EMT approves a plan

NOTE: *Some transition or grandfathering language may be needed for any existing program expenditures*

3. Federal funds and programs for energy efficiency and weatherization;
 - Low-income federal programs would be administered by MSHA with approval of plans by the EMT
 - All other federal energy programs would appear to be administered by EMT

NOTE: *There are some ambiguities in the draft.*

Sec. 12 (p. 24, lines 25-31) provides that all energy efficiency and weatherization funds, other than funds for low-income consumers, go directly to EMT.

- *But Sec. 7 (p. 11, lines 31-40) adds a provision to 35-A MRSA 1004 that preserves current law directing the PUC to administer SEP and other related federal programs – the new language then directs that federal funds are transferred to the EMT at the direction of EMT.²*
- *And on p. 19, line 26, it indicates that all federal weatherization funds go to a subaccount in the EMT.*

4. A new Regional Greenhouse Gas Initiative Trust Fund, which replaces the Energy and Carbon Savings Trust and the Maine Energy Conservation Board.
 - The use of the fund, while moved to the EMT, is not changed;
5. A new heating fuels efficiency and weatherization fee and fund program.

- Funded by a new and annually increasing heating fuel charge assessed by PUC at terminal or upon transport by vendor into State:
 - a. starts at \$1.05/barrel in 09-10 and ends at \$2.95/barrel in 18-19
- PUC would be directed to provide or consider granting exemptions/waivers

NOTE: *language and mechanics of exemptions/waivers should be reviewed. (p. 23, lines 20-29). For example, the language is somewhat unclear in providing that that the PUC shall exempt certain customers “as long as” certain “uses” are “not subject to” the charge.*

- Programs funds would be used for heating fuel DSM programs for residential, commercial and institutional customers as well as energy auditor training and equipment cost support
- A “proportionate share” of EMT’s administrative costs can be funded from the program funds

NOTE: *May want to make clear how much of program funds can be used for administrative costs*

² Current law 35-A MRSA 10004(1), unchanged by bill, provides that “The commission shall administer: A. The United States Department of Energy State Energy Program; and B. Other federally funded programs related to functions that the commission performs.”

- Allows MSHA to issue revenue bonds of \$10 million/year for 5 years and transfer the proceeds to the EMT for use as a revolving loan fund. Language (p. 26, lines 13-15) indicates debt service is paid from the program funds.

NOTE: *May need some further clarity as to how the revolving loan fund is to be applied and the role of MSHA, if any, beyond issuing the bonds.*

TESTIMONY SUMMARY (Public hearing: 11 March 09)

<p><u>PRO:</u></p> <ul style="list-style-type: none"> • Time for action on energy efficiency • Need one coordinated program across all fuel sources with 10-15 year funding horizon • Better to have “independent entity” administer programs and PUC oversee – nimbleness in responding to changing market; ability to “experiment”; PUC reluctance to increase T&D SBC • Most states run programs through utilities; few that don’t use some sort of independent entity • Existing system for low-income weatherization works well • Be clear on how the funds can and can’t be spent (clarity on limits is important) • Ensure entity staffed up before it starts running programs • More clarity in funding level and evaluation of natural gas programs would be helpful • MSHA auditor training not as complete as PUC/BPI program – low-income housing audits different from other audits; • set high bar for audits – need real standards • be even more bold (expend funding further, include industrial sector, include distributed generation, create green job ladder) • avoid “pitfall” of relying on annual fuel utilization efficiency rating (AFUE) in setting standards for thermal efficiency of furnaces • Need to promote electrification as well as efficiency • having PUC collect oil revenues is novel idea 	<p><u>CON:</u></p> <ul style="list-style-type: none"> • opposition to heating fuel charge – use existing funds and stimulus funds • citizens unlikely to favor oil tax • don’t promote fuel switching: winners and losers for fuel – promote efficient furnaces
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Neither for nor against:

- Avoid creating bureaucracy
- **MSHA:**
 - appropriate to limit MSHA to low-income programs (MSHA currently provides various energy efficiency programs -- not just for low-income (e.g., HELP))?
 - Structure of EMT (2/3 vote) appropriate?
 - appropriate/efficient to have EMT monitoring programs MSHA oversees?
 - appropriate/efficient to have EMT approve MSHA's federal weatherization plan?
 - clarify who gets what federal weatherization funds
- put a utility representative on board as voting member
- **PUC:**
 - odd role for PUC: accountable for programs but not in control of programs – does not have a clear regulatory role under the bill
- Don't expand natural gas DSM programs to the small utilities – too large a burden for these small operations to handle
- Don't exempt EMT from the State Purchasing Agent competitive bid requirements
- Put someone from building trades industry on the board
- protect integrity of RGGI trust fund
- bill conforms to State Energy Plan

INFORMATION REQUESTS

- Staff: examples/models of entities created in Maine law: structure and function, issues (see separate memo)
- Staff: table of where funding coming from and going under the bill (see attached)
- Steve Ward and Anna Hicks (ME Equal Justice Partners) agreed to suggest language for exemptions from heating oil charge for low-income persons (Nicole Witherbee, ME Center for Econ. Policy, offered to help as well)
- Matthew Smith (CAPs) agreed to provide the cost of weatherizing 830 units last year and savings achieved (payback)
- Matthew Smith (CAPs) agreed to provide the number of people on waiting list for weatherization
- Patti Aho (Unitil) agreed to provide specific provisions she feels require greater clarity (natural gas provisions related to funding and program evaluation)
- Peter Merrill (MSHA) agreed to provide in writing issues of concern
- Peter Merrill (MSHA) agreed to provide administrative costs for LIHEAP/weatherization programs (% of funding) and numbers of homes weatherized
- Opportunity ME agreed to provide its analysis of overlap and differences between this bill and Rep. Berry's bill
- Chris Jackson (ME Chamber) agreed to provide comments regarding other new resources for energy efficiency and comments on how much funding might be needed to encourage people to undertake measures with 5-10 year payback
- Jamie Py (MODA) agreed to provide thoughts on applying heating fuel tax upon retail sale rather than at terminal/transport into state – in order that exemptions might be easier to provide
- John Brautigam (PUC) agreed to provide more detail on PUC oversight role under bill and what further authority it would need effectively to oversee EMT

- Pete Didisheim (NRCM) agreed to provide details of benefits of weatherization (vs. burden of new heating fuel tax); also agreed to provide estimate of number of homes that could be weatherized using the proposed heating fuel tax and the homeowner savings if weatherization achieved maximum efficiency results, as well as heating fuel cost assumptions in the calculations
- Michael Stoddard (Env. NE) agreed to provide estimates of how many homes could be weatherized with the heating fuel tax revenues

FISCAL IMPACT:

LD 886 (Speaker Pingree)
FUND SOURCES, AMOUNTS AND USES

Funding source	Amount	Use
T&D ratepayer charge – <i>large customers exempt</i>	<i>indeterminate</i> <ul style="list-style-type: none"> amount necessary to realize all energy efficiency and demand side reduction resources in the State that are cost-effective, reliable and feasible¹ 	Administered by Eff. ME Trust (EMT): <ul style="list-style-type: none"> up to 9% for EMT administrative costs 1% for EMT technical support electricity conservation programs (<i>large cust. excluded</i>)
natural gas utl. ratepayer charge	<i>indeterminate</i> <ul style="list-style-type: none"> amount necessary to realize all energy efficiency and demand side reduction resources in the State that are cost-effective, reliable and feasible – applied to all nat. gas utilities² 	natural gas utility conservation programs approved by EMT and in accordance with rules adopted by PUC or conservation programs administered by EMT (not clear whether limited to natural gas conservation)
RGGI sale of CO2 allowances and related ISO capacity payments	<i>capacity payments and RGGI amounts indeterminate</i> <ul style="list-style-type: none"> RGGI min. under current floor = \$6.7 m/yr RGGI at most recent (March) auction price³ = \$12.4 m/yr RGGI max. at cap (\$5/allowance) = \$17.9 m/yr 	Administered by EMT: <ul style="list-style-type: none"> 85% for electricity conservation programs 15% for fossil fuel conservation and arrangements up to 5% for admin. (2% EMT; 3% DEP and AG)
heating fuel charge	<ul style="list-style-type: none"> starts at \$1.05/barrel in '09-10 = <i>estimate</i> \$12,756,791 increases 21¢/year ends at \$2.94/barrel in '18-19 = <i>estimate</i> \$ 35,719,016 rough <i>estimate</i> over the 10 years = \$242,403,424 (see attached) 	Administered by EMT: <ul style="list-style-type: none"> “proportionate share” of EMT admin. costs debt service costs on MSHA bonds (see below) remainder for heating fuel conservation programs
MSHA bond funds	\$10m/yr for 5 years (<i>repaid from heating fuel charge</i>)	Administered by EMT: revolving loan fund for energy efficiency and weatherization (not-fuel specific)
federal weatherization funds	DHHS: historic 9-yr avg. about \$4,300,000/yr ⁴ DOE: historic 9-yr avg. about \$2,800,000/yr ⁵ ARRA one-time DOE: \$41,935,015	MSHA administer in accordance with federal rules and EMT approval (NOTE: expenditure of ARRA funds subject to legislative approval under current law)
federal SEP funds	historic 9-yr avg. about \$400,000/yr ⁶ ARRA one-time: \$27,305,000	Administered by EMT (NOTE: expenditure of ARRA funds subject to legislative approval under current law)
federal EECBG	no historic funding; may now be on-going funding ARRA one-time funding: \$9,593,500 ⁷	Administered by EMT (NOTE: expenditure of ARRA funds subject to legislative approval under current law)
other sources ⁸	<i>indeterminate</i>	Administered by EMT

¹ For reference, PUC '10 EM budget = \$15,285,334 (\$1.2 million for administrative fund and \$14,085,334 for the program fund).

² Maine Natural Gas, Bangor Gas and Unitil. Current law only applies to Unitil. Unitil '08 effort = \$442,041 projected '09 = \$707,328

³ \$3.51/allowance

⁴ MSHA figures 2000-08 (does not include 10% admin.); includes both weatherization and Central Heating Improvement Program for furnace replacement.

⁵ DOE figures for 2000-08 (includes 10% admin. costs and 10% for training and other uses)

⁶ EERE figures for 1999-2007, see http://apps1.eere.energy.gov/state_energy_program/projects_all_by_state.cfm/state=ME

⁷ State must pass not less than 60% on to cities and counties ineligible for direct formula grants from the DOE. Each state decides how to award these sub-grants.

⁸ Bill refers to other sources on p. 19, lines 28-30.

LD 886

Estimated Money to Be Collected Under the Heating Fuels Efficiency and Weatherization Fund

Year	Benefit Charge Collected on #2 Heating Oil*	Benefit Charge Collected on Kerosene*	Benefit Charge Collected on Propane**	Total Benefit Charge Collected Per Year
2009-2010	\$9,022,022	\$889,269	\$2,845,500	\$12,756,791
2010-2011	\$10,826,427	\$1,067,123	\$3,414,600	\$15,308,150
2011-2012	\$12,630,831	\$1,244,977	\$3,983,700	\$17,859,508
2012-2013	\$14,435,235	\$1,422,831	\$4,552,800	\$20,410,866
2013-2014	\$16,239,640	\$1,600,684	\$5,121,900	\$22,962,224
2014-2015	\$18,044,044	\$1,778,538	\$5,715,390	\$25,537,973
2015-2016	\$19,848,449	\$1,956,392	\$6,260,100	\$28,064,941
2016-2017	\$21,652,853	\$2,134,246	\$6,829,200	\$30,616,299
2017-2018	\$23,457,257	\$2,312,100	\$7,398,300	\$33,167,657
2018-2019	<u>\$25,261,662</u>	<u>\$2,489,954</u>	<u>\$7,967,400</u>	<u>\$35,719,016</u>
Total for 2009-2019	\$171,418,420	\$16,896,114	\$54,088,890	\$242,403,424

*Based on 2008 amounts transferred or transported into Maine (8,592,402 barrels of #2 heating oil and 846,923 barrels of kerosene)
Data from the Maine Coastal and Inland Surface Oil Clean-up Program, DEP.

**Based on 2008 amounts sold/delivered by prime supplier in Maine (2,710,000 gallons)
Data from U.S. Energy Information Administration <http://tonto.eia.doe.gov/dnav/pet/hist/c900011231m.htm>

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 6 April 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 1201, An Act Regarding Energy Independence**

BILL SUMMARY

This bill:

1. Establishes Efficiency Maine Plus (EM+):

- As an independent authority and public body corporate and politic and instrumentality of the state
 - To plan, develop and implement energy conservation, carbon reduction and renewable energy programs
 - To meet goals:
 - Greenhouse gas reduction 10% below 1990 levels by 2020
 - Weatherize 100% residences by 2030
 - Weatherize 50% businesses by 2030
 - Reduce peak electric load by 100 MW by 2020
 - Increase jobs and business development to deliver efficiency and renewable products and services
- The director is appointed by the Governor, subject to legislative confirmation, to serve a 4-year term
 - The “powers and duties” of EM+ are “vested solely in the director” (p. 4, line 17)
 - **NOTE: *this seems to contradict those portions of the bill that direct the EM+ Council to develop, plan, establish, coordinate and evaluate EM+ programs. Should clarify relationship between director and council. Intent that Council oversees EM+ and the director administers programs at direction of Council? May want to clarify that Council can delegate to director certain powers***
- Director hires staff who are not state employees (p. 25, line 40)
 - Until July 1, 2010 (when current programs are transferred to EM+), EM+ employees are on payroll of PUC (p. 25, line 8)
 - Director shall give preference to PUC EM employees in hiring (p. 25, line 32)
 - Director must develop budget for Oct 1, 09 – July 1, 2010, which is then approved by EM+ Council; PUC is required to provide the funds from the electric conservation fund and the Carbon Trust
 - Governor must appoint 1st director by October 1, 2009 (p. 24, line 28)
Note: will be subject to Legislative confirmation

- Creates the EM+ Council to develop, plan, coordinate and evaluate all EM+ programs
(*See note above regarding relationship and responsibilities of director and Council*)
 - 9 voting members appointed by Gov. and subject to confirmation by legislature who serve 3-year staggered terms

- 3 ex officio

- director OEIS who serves as chair of Council
 - chair PUC,
 - director MSHA

NOTE: *ex officio members presumably should not be appointed and subject to confirmation*

- 4 representing consumer groups:

- residential
 - commercial
 - small business,
 - industrial

- 2 public members with relevant expertise

- members must be appointed by July 1, 2009 (p. 24 line 26)

Note: will be subject to Legislative confirmation

- Council duties:

- Establish and revise programs in accordance with quadrennial plan

- Quadrennial plan must

- address measures for all-fuels and all customer classes
 - Include measurable goals
 - Establish priorities for programs
 - Account for use of projected funding levels
 - Include strategies that integrate conservation and renewable and efficient energy production technologies
 - Promote use of renewables

- Council must hold hearing on plan

- Plan and updates are presented to Governor and UTE Committee

- 1st plan must be adopted on or after July 1, 2010

- The new director must prepare plan for Council approval by July 1, 2010 (p. 24, line 37)

- Develop quantifiable measures of performance

- to which it will be held accountable “to the Governor and the (UTE) committee” (p. 5, line 13)

- **NOTE: *The agency will be accountable to the Legislature – may want to avoid suggesting in law that it would only be accountable to a specific legislative committee***

- Measures are to be “negotiated between the council and the Governor and the (UTE) Committee.” (p. 5. line 16)

- **NOTE: *not clear how this would work. If the intent is to ensure legislative approval of the performance measures, they should be established through major substantive rules or required to be submitted in the form of legislation that the Legislature would enact or amend. As written,***

the provision may raise constitutional issues (e.g., separation of powers)

- Also performance measures to which it will hold *recipients* of program funds
- Adopt rules (all rules are routine technical rules) regarding
 - Expenditure of funds
 - Providing for independent evaluation of program expenditures
 - Council must arrange for independent evaluation at least once every 5 years of each program with an annual budget over \$500K (p. 21, line 20)
 - Establish standards for training and certification of
 - energy auditors, (must be adopted no later than 1/1/12 – p. 26, line 19)
 - weatherization technicians,
 - solar and wind energy system installers
 - PUC's existing rules relating to EM, solar and wind rebates and gas utility conservation programs are deemed rules of EM+
- NOTE: under the bill, the repeal of the PUC's existing programs and the moving of those programs to EM+ occur on July 1, 2010 – should the transfer of the rules occur on that date? (p. 25, line 12)**
- NOTE: p. 25, line 18 indicates that EM+ is successor to PUC with regard to conservation programs – should this be qualified to indicate that this occurs on July 1, 2010? All other transition provisions (records, property, funds, etc.) pivot on that date.**
- Consult with MSHA on energy programs
- Beginning Feb 1 2012, provide an annual report to Governor and UTE:
 - Of its actions
 - NOTE: should this be a report of EM+ actions, not just of the Council?**
 - An accounting of funds received and expenditures, including of administrative fund
 - General evaluation of funding, programs and customer satisfaction
 - Summary of measures of performance
 - Recommendation for changes to law
- *Beginning 1 July 10 EM+ administers these current programs (current programs on that date are repealed):*
 - Electric conservation program now administered by PUC
 - Differences from current program:
 - EM+, not PUC, would administer the program
 - Currently PUC required to use competitive bidding process in choosing service providers, with certain specific exceptions); under the bill (p. 25 line 36), the council adopts rules governing the procedures (the current specific exceptions to using competitive bidding are brought forward) -- so the general requirement to use competitive

bidding is removed and EM+ is allowed to determine selection process

- PUC would still set the SBC according to current standards in law but in consultation with EM+ (p. 27, line 5)

NOTE: the funding piece is divided from the program piece; the conservation fund should be clearly established in law with the program (p. 10, line 16) and all the attributes of the fund should be specified there (the language from p. 28, lines 1-4 should be moved there)

NOTE: p. 26, line 32 refers to use of the SBC for “administrative costs” – not clear whose administrative costs are intended here (PUC or EM+) If EM+ should clarify by x-ref definition of its admin. costs – p. 2, line 21). If PUC admin. costs, then may want to make clear what % or amount is available to PUC.

- Carbon savings program (RGGI) now administered by the Trust
 - Differences from current program:
 - Portion of funds available for administrative expenses
 - Currently 5% total
 1. 3% Trust
 2. 2% DEP and AG
 - Bill 10% for EM+, DEP and AG collectively (p. 12, line 4)
- Natural gas conservation program now administered by Unitil
 - Differences from current program:
 - Current program applies only to largest utility (Unitil) which administers the program; min. funding effort under current law is 3% of delivery revenues
 - Bill provides for assessment by PUC of all nat. gas utilities¹ -- at least 3% of delivery revenues – and program to be administered by EM+

NOTE: the funding piece is divided from the program piece; the nat. gas conservation fund should be clearly established in law with the program (p. 13, line 19) and all the attributes of the fund should be specified there (the language from p. 29, lines 18-20 should be moved there).

- Solar and wind rebate program now administered by PUC
 - No differences from current program other than moving administration to EM+

NOTE: the funding piece is divided from the program piece; each piece refers to the other as where the program fund is established – neither establishes it (see p.14, line 12 and p. 29, line 34). The program fund should be established in law with the program (establish a new subsection on p. 14) and all the

¹ Maine Natural Gas, Bangor Gas and Unitil.

attributes of the fund should be specified there (the language from p. 29, lines 34 -36) should be moved there).

- Training for installers of solar equipment now administered by PUC
 - No differences from current program other than moving administration to EM+
- Training for energy auditors
 - No differences from current program other than moving administration to EM+
- Federal energy programs (SEP and EECBG)
 - No substantive differences from current program other than moving administration to EM+
- Energy Conservation Small Business Revolving Loan Program
 - No substantive differences from current program other than moving administration to EM+

NOTE: language on p. 16, line 29 refers to program funding including “any amounts” EM+ receives from PUC T&D SBC. Under the bill, EM+ receives all of those funds. May want to specify that EM+ directs the amount of the SBC that goes to this program
- Suggested energy efficiency standards and disclosure statement for rental property currently administered by MSHA and PUC.
 - No substantive differences from current program other than moving administration to MSHA and EM+
- Public information and outreach program now administered by PUC
 - Differences from current program:
 - Fees collected now by PUC for services are deposited with Treasurer and available to PUC to pay expenses
 - Bill provides that the fees are paid and kept by EM+ for its expenses
 - Somewhat less detail as to specific program elements
- Authorizes EM+ to establish and administer a new building weatherization program
 - To provide weatherization for middle and upper-income homeowners
 - At min.: to provide pre-audit, weatherization, post-audit (financing of costs)
 - Goals:
 - Weatherize 100% residential and 50% *business* by 2030
NOTE: appears to be an inconsistency between goals (p. 18, lines 25 and 27) and program (which provides weatherization to “homeowners” – p. 18 line 15)
 - Reduce fuel consumption for house by at least 20%
 - EM+ administers through cooperative agreement with MSHA (MSHA to administer low-income “portion of the program”)
NOTE: the program is for middle and upper income persons, so does not have a low-income portion; not clear there is any need to refer

to MSHA's separate low-income federal weatherization programs, which are preserved by the bill (see p. 21)

- Council may adopt routine technical rules, establishing standards and procedures, including rules providing for connecting database systems for purposes of monitoring performance and capturing data so that monetary value of savings can be realized
- Funding for EM+:
 - Federal funds (SEP or EECBG funds could be applied here)
 - Bond proceeds (e.g., GO bonds, MSHA bonds?)
 - Any other funds available
 - Up to 10% may be used for administrative costs
 - Creates an “unregulated fuels” fund for an unregulated fuels program (p. 17, line 23)

NOTE: there appear to be no funds collected from unregulated fuels under the bill.

- Summary of administrative funding:
 - Up to 10% of all funds may be used for EM+ administrative expenses (generally p. 6 line 26; see also RGGI at p. 12, line 4, and new weatherization fund at p. 19, line 16)
- 2. Establishes a task force to look at a report recommendations for improving efficiency at state facilities
 - Members: DAFS, OEIS, DEP, PUC, SPO, others appointed by DAFS
 - Reports to SLG committee 12/1/09
- 3. Modifies duties of OEIS
 - Director is chair of EM+ Council
 - Promote interagency coordination with EM+
 - Consult with EM+ in developing state energy plan
 - Submit annual report to UTE on activities of OEIS and describe progress in implementing state energy plan
 - i. UTE authority to report out legislation on energy policy (mirrors provision now under ERC that the bill repeals)
- 4. Creates within DAFS a new Energy Independence Fund:
 - Uses:
 - i. ensure methodical transition to energy independence and security;
 - ii. transform the ways homes and businesses are heated, energy is used and people and cargo are transported; and
 - iii. gain independence from foreign oil and maximize energy efficiency, enhance renewable energy sources and invest in an economic development strategy to ensure a vibrant, environmentally sound and prosperous future.

NOTE: Funds not dedicated to any specific programs; use of funds will be determined by the Legislative allocation of the funds.

- Sources of revenue:
 - Compensation for use of state waters and state-owned islands for generation of energy, transmission of energy or communications systems
 - Program for receiving such compensation to be developed by SPO (may adopt routine technical rules).

- Compensation to be based on “avoided costs” and other factors
- These funds to be deposited in the Energy Independence Fund but used not only for energy efficiency but for fisheries management, fisheries-related infrastructure and programs designed to support fishing businesses and related marine industries

NOTE: This provision (p. 31, lines 6-8) inconsistent with stated purposes of Energy Independence Fund.

- Compensation for leasing highways as energy corridors, if DOT determines appropriate
 - Compensation to be based on “avoided costs” and other factors. (DOT may adopt routine technical rules)
5. On July 1, 2010, abolishes the Carbon Savings Trust, Maine Energy Conservation Board and the Energy Resources Council and the EM program at PUC and transfers their responsibilities to EM+

TESTIMONY SUMMARY (Public hearing: 1 April 2009)

<p><u>In Support:</u></p> <ul style="list-style-type: none"> • Create one integrated entity to handle certain energy functions • <i>Proposal:</i> Study the leasing portions of the bill (highways and state waters) • need to add to any energy plan development of transmission system, smart grid and plug in hybrids • Not clear how the pricing piece (“avoided cost”) for the corridors and state waters/islands will work; don’t pre-select valuation method – need to consider options • Good to set policy in law and let the appropriate entity work out the details • Concerns about lack of independence from Governor and political forces <ul style="list-style-type: none"> • serving at pleasure of Governor not a good model • director should be accountable to board, not Governor • performance measures should be negotiated with the PUC, not with Governor • independent analysis of programs should be required through contracts with service providers – avoid funding through administrative fund of EM+ • Stability is important • don’t have MSHA set standards for auditors except for low income programs • don’t subsidize the competition • Funds from leasing state waters should also benefit coastal/island communities and fishermen • good to have the nat. gas SBC go to the new entity to 	<p><u>In Opposition:</u></p> <ul style="list-style-type: none"> • Serious concerns about the corridor piece of the bill and how moving forward with that could affect leverage with regard to border dispute w/ re: LNG tankers in Head Harbour passage • Oil is reliable, secure and a “leader in value” • Subsidizing renewable energy may destroy jobs • Oppose any heating fuel tax (none in bill) • Promote existing energy efficiency technologies • New Energy Independence Fund (lease corridor revenues) purposes sounds like Government will be telling citizens what they can and can’t do • Support energy efficiency planning, but not the bill
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<p>administer programs</p> <ul style="list-style-type: none"> • need to make clear how the current leasing of submerged lands and this new leasing program will work • Proposal: exclude small gas companies. SBC won't raise much money and may have more administrative cost than worth – concern about rate increase for customers • Proposal: add biomass heating to the solar/wind rebate program • Proposal: allow RGGI to be used for alternative heating/cooling technology like electric thermal storage 	
<p><u>Neither for nor against:</u></p> <ul style="list-style-type: none"> • How services delivered is what really matters – workforce is already developing out there • “one roof” consolidation of various energy programs is good • Would be better if the director of the entity reported to the PUC • entity should be such that it can be “dismissed for nonperformance” • need independence from political influence • Existing program within PUC works – don't create another administrative organization – just bigger Government • PUC is most experienced and “apolitical public entity” to provide oversight over new entity • should add a heating fuels tax and create an “all fuels” approach to efficiency with long-term sustainability • Proposal: require energy use disclosure at time of sale of home • loan programs for efficiency doesn't work • PUC model is better than having program director serve at pleasure of Governor – need independence • don't set lofty goals if don't provide the funding • Don't move RGGI into new entity – may lose its integrity • “Avoided cost” wrong standard for corridors • Irving corridor proposal could effect renewable energy development in ME • Proposal: include a strong “cost effectiveness” test for efficiency programs • Proposal: consider allowing employees of PUC who move to new EM+ to remain state employees • should voluntary renewable fund also be transferred to new entity? • Careful and deliberate transition of programs is appropriate – it may be a complex undertaking 	

NOTES & POTENTIAL ISSUES

- See notes in summary of technical issues
- John Kerry will be providing amendments dealing with transition, energy corridor issues and some “technical fixes”

INFORMATION REQUESTS

- John Kerry will provide more detail on the concept of leveraging weatherization funds through public/private partnership with new entity (EM+) providing a “guarantee” on certain loans
- Steve Conant, NEITC (Green Line) agreed to provide pricing information on siting Hudson portion of Green Line
- Mike Mahoney (BHE) agreed to provide his testimony in writing
- Bob Howe agreed to provide his recommendations for appropriate workforce training standards
- Bangor Gas agreed to provide testimony in writing
- MODA’s plan for addressing rising oil prices
- Open request to environmental organizations: comments on effect of leasing corridor NB-NH could have on renewable development in ME
- Open request to all interested in the corridor issue: what needs to be studied?
- Copy of Eff. VT report on inadequacy of loan programs (attached to CMP testimony on LD 955)

FISCAL IMPACT

LD 1201 (Governor's Bill)
FUND SOURCES, AMOUNTS AND USES

Funding source¹	Amount	Use
T&D ratepayer charge – <i>large customers exempt</i>	<i>indeterminate</i> <ul style="list-style-type: none"> amount necessary to realize all energy efficiency and demand side reduction resources in the State that are cost-effective, reliable and feasible² 	Administered by Eff. ME Plus (EM+): <ul style="list-style-type: none"> up to 10% for EM+ administrative costs electricity conservation programs (<i>large cust. excluded</i>)
natural gas utl. ratepayer charge	<i>indeterminate</i> <ul style="list-style-type: none"> at least 3% – applied to all nat. gas utilities³ 	Administered by EM+: <ul style="list-style-type: none"> up to 10% for EM+ administrative costs natural gas conservation programs
RGGI sale of CO2 allowances and related ISO capacity payments	<i>indeterminate</i> <ul style="list-style-type: none"> RGGI min. under current floor = \$6.7 m/yr RGGI at most recent (March) auction price⁴ = \$12.4 m/yr RGGI max. at cap (\$5/allowance) = \$17.9 m/yr 	Administered by EM+: <ul style="list-style-type: none"> 85% for electricity conservation programs 15% for fossil fuel conservation and arrangements up to 10% for admin. (EM+, DEP and AG)
Unregulated fuel revenues	<ul style="list-style-type: none"> none provided under bill (fund created) 	Administered by EM+: <ul style="list-style-type: none"> unregulated fuels conservation program
Utility leases of state waters and highways	<i>indeterminate</i>	DAFS Energy Independence Fund <ul style="list-style-type: none"> specific use TBD (bill provides some intended purposes)
federal weatherization funds	DHHS: historic 9-yr avg. about \$4,300,000/yr ⁵ DOE: historic 9-yr avg. about \$2,800,000/yr ⁶ ARRA one-time DOE: \$41,935,015	MSHA administer in accordance with federal rules (NOTE: expenditure of ARRA funds subject to legislative approval under current law)
federal SEP funds	historic 9-yr avg. about \$400,000/yr ⁷ ARRA one-time: \$27,305,000	Administered by EM+ (NOTE: expenditure of ARRA funds subject to legislative approval under current law)
federal EECBG	no historic funding; may now be on-going funding ARRA one-time funding: \$9,593,500 ⁸	Administered by EM+ (NOTE: expenditure of ARRA funds subject to legislative approval under current law)

¹ Does not include the solar and wind rebate program which is funded under bill exactly as under current law; other bills leave that program with PUC.

² For reference, PUC '10 EM budget = \$15,285,334 (\$1.2 million for administrative fund and \$14,085,334 for the program fund).

³ Maine Natural Gas, Bangor Gas and Unitil. Current law only applies to Unitil. Unitil '08 effort = \$442,041 projected '09 = \$707,328

⁴ \$3.51/allowance

⁵ MSHA figures 2000-08 (does not include 10% admin.); includes both weatherization and Central Heating Improvement Program for furnace replacement.

⁶ DOE figures for 2000-08 (includes 10% admin. costs and 10% for training and other uses)

⁷ EERE figures for 1999-2007, see http://apps1.eere.energy.gov/state_energy_program/projects_all_by_state.cfm/state=ME

⁸ State must pass not less than 60% on to cities and counties ineligible for direct formula grants from the DOE. Each state decides how to award these sub-grants.

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 6 April 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 1181, An Act to Create Jobs through Investment in Green Energy**

BILL SUMMARY

PART A [STATE]

1. New Efficiency Maine administers all energy efficiency or distributed generation programs. Requires all state agencies administering programs related to energy efficiency or distributed generation to contract with Efficiency Maine (EM) to administer the program, unless doing so is contrary to law or is not cost-effective. The Maine State Housing Authority and the Maine Municipal Bond Bank are expressly exempted from this general requirement;
2. Raises State building standards. Modifies the law governing energy efficiency in construction or substantial renovation of state owned or leased buildings and buildings built with state funds.
 - a. *Current law* requires planning and design of new buildings and renovations for which costs exceed 50 % of the building's current value
 - i. involve examination of long-term energy costs,
 - ii. include a energy use target 20% higher than current statutory standards under 10 MRSA §1415-D
 1. energy standards of 2004 ASHRAE standards or 2003 IECC

NOTE: §1415-D is repealed under current law July 1, 2010 and is replaced by the Model Uniform Building and Energy Code (MUBEC) to be established by DPS Technical Building Codes and Standards Board under 10 Chapter 1103;¹
 - iii. Include a life-cycle cost analysis;
 - b. *The bill* modifies this law to
 - i. broaden the application to include buildings owned or leased by the U. of ME, Community College System and the Maine Maritime Academy;
 - ii. broaden the application to include substantial renovations for which costs exceed 20% of the building's current value and expressly includes state-funded substantial renovations (current law appears to include only renovations of state-owned or leased buildings, not state-funded renovations);
 - iii. require consideration of distributed generation (defined in Part I) and load management systems;
 - iv. change the energy use target to the greater of

¹ Under PL 2007, ch 699, Sec. 21, the MUBEC will substantively be composed of: The 2009 edition of the International Building Code; The 2009 edition of the International Existing Building Code; The 2009 edition of the International Residential Code; The 2009 edition of the International Energy Conservation Code; The ASHRAE Standards 62.1, 62.2 and 90.1; and The Maine model radon standard for new residential construction set forth in Title 25, section 2466 and associated rules.

1. 20% higher than the energy standards of MUBEC; and
2. the green building standard to be adopted by rule by EM
 - a. Requires EM to use the LEEDs silver standard or an equivalent, provided that whatever it adopts is at least 20% higher than those under MUBEC.

NOTE: since this green standard must be 20% above MUBEC, there is no reason in the law to refer to the greater of 20% over MUBEC or the green standard -- by definition, MUBEC will never be above the green standard

3. State fleet fuel economy. Requires BGS to establish the highest feasible fuel economy standards for State fleet.

PART B [ALL BUILDINGS AUDITED; PVT ACTIVITY BONDS]

1. All buildings required to have energy audit. Requires every building and facility in the State to have by the end of 2018 a thorough energy audit meeting standards prescribed by EM.
 - a. Exceptions are provided for buildings or facilities scheduled to be demolished, buildings or facilities that meet the green building standard adopted by EM and buildings exempted by rule by the PUC
 - b. If the audit is done in coordination with EM, EM must pay the reasonable costs.
2. Private activity bond ceiling. Modifies the private activity bond ceiling to provide that FAME may issue private activity bonds for Efficiency Maine projects

PART C [SCHOOLS]

1. State reimbursement for school expenditures on adult education. Modifies state reimbursement for school expenditures on adult education to adjust for increases in utilization attributable to workforce development programs adopted in the previous four years in the region served (see Green Energy Job Growth Initiative, below).
2. Workforce development funds. Provides that a school unit may receive workforce development funds from the Green Energy Job Growth Initiative (see Part D) and that these funds are not included in the EPS funding formula calculations;
3. EM approval required. Requires that all school construction projects, permanent lease-purchase projects or projects with capital costs exceeding \$50,000 must be approved by EM;
4. Raises school building standards. Modifies the law governing energy efficiency in state-funded school construction (new buildings and substantial renovations) – ***modifications are the same as those made by the bill to the law governing state buildings, above, except:***
 - a. Current school construction law allows for a waiver for substantial renovations of historic school buildings; the bill continues to permit waivers provided the renovation meets the green building design standard for historic buildings established by EM
5. Energy service companies. Modifies the law permitting SAUs to enter agreements with energy service companies for 3rd party financing of energy conservation or air quality improvements.
 - a. Current law permits the agreements to be up to 15 years; the bill allows up to 20 years;
 - b. Expands the authorization to allow the contracts to be used for financing distributed renewable energy systems (defined elsewhere in bill; see Part I, below)
 - c. Current law limits the contract price per building to \$2 million; the bill allows this cap to be exceeded as long as the SAU bears no risk of the project costs exceeding benefits.
 - d. Allows the SAU to seek assistance from EM;

PART D [DOL; GREEN JOBS PROGRAM]

1. Green Energy Job Growth Initiative. Establishes within the Department of Labor a Green Energy Job Growth Initiative:
 - a. Its goal is to increase by 2019 the number of green energy economy jobs to at least 20,000 over a 2008 baseline
 - b. It defines “green energy economy” as that portion of the economy relating to demand side management and renewable energy, but not to the transportation sector;
 - c. It requires the DOL to undertake market analysis with respect to the green energy economy;
 - d. It requires the DPFR to develop recommendations for comprehensive career ladders;
 - e. It requires the DOL to recommend industries to be considered high-demand green industries;
 - f. It requires the DECD to identify emerging technologies and innovations and develop strategies to promote green energy economy businesses and green technology R&D
 - g. It requires the Maine Jobs Council to create and oversee green energy economy (workforce collaboratives among stakeholders) to conduct market and labor analysis, plan strategies and leverage and align funding sources;
 - h. It provides 5% of funds from the revenue generated by the sale of “efficiency credits” (see Part J);
 - the department can use these funds, in accordance with detailed guidelines, to provide grants to industry or sector partnerships.
 - 2009-11: up to 10% for admin. costs; 2012 and after, 2% for admin costs

PART E [COUNTIES]

1. EM assistance. Allows counties to seek assistance from EM;
2. Energy service companies. Allows counties to enter into contracts with energy service companies (3rd party financing) for distributed renewable energy systems as well as efficiency and air quality improvements;
3. Establishes county building standards. Requires all county-owned, leased or funded buildings and substantial renovations to (this is *pretty much identical to the provision in the bill relating to state buildings and municipal buildings – counties not currently subject to standards*):
 - a. involve consideration of energy efficiency and distributed generation systems,
 - b. include an energy-use target that is the greater of A) 20% higher than the energy standards of MUBEC and B) the green building standard to be adopted by rule by EM
 - i. Requires EM to use the LEEDs silver standard or an equivalent, provided that whatever it adopts is at least 20% higher than those under MUBEC.
NOTE: since this green standard must be 20% above MUBEC, there is no reason in the law to refer to the greater of 20% over MUBEC or the green standard – by definition, MUBEC will never be above the green standard
 - ii. this requirement only applies if the life-cycle costs of meeting it do not exceed a reasonable alternative that is less efficient
 - b. include a life-cycle cost analysis
 - c. This provision also provides that if any portion constitutes a mandate under the constitution, a county is not bound to comply unless the State provides 90% of the required costs. The State may condition funding on repayment from the energy savings.

PART F [LOW-INCOME HOUSING; MSHA]

1. Coordinate with EM. Requires MSHA to coordinate with EM in administering its weatherization and fuel assistance programs (see also specifically Part K, below (p. 61 of bill))
2. Low-income rental housing standards. Establishes green design building standards (LEEDs silver or similar) for low-income rental housing
 - a. all *new* such construction must meet the standards

- b. by end of 2018 all *existing* buildings must meet the standard unless MSHA determines that it will decrease building's economic viability.
 - c. it also conditions a landlord's participation in HUDs Housing Choice Voucher program² and in DHHS's bridging rental assistance program³ on the landlord installing all energy efficiency and distributed energy systems with a payback period of 15 years or less.
3. Waiver of the LIHEAP cap. Directs MSHA in consultation with EM, to apply for a waiver of the LIHEAP cap on expenditures for demand reduction (weatherization).

PART G [MUNICIPALITIES]

1. Establishes energy efficiency standards for municipally-funded buildings (*same standards and provisions as for counties* – see Part E)
2. Allows municipalities to assist property owners in increasing energy efficiency and using distributed generation.
3. Use of tax bills. Allows municipality to integrate collection of efficiency/DG loans though property tax bills

PART H (MMBB)

1. Modify Efficiency Partners program. Program administered by MMBB for municipal and school buildings
 - adds funding distributed generation to program purposes
 - makes EM the administrator with respect to application of the funding
2. Consult with EM. Requires MMBB to consult with EM in administering various programs/funds:
 - CWA remediation revolving loan fund;
 - SDWA loan fund;
 - municipal lease finance program;
 - municipal public improvement program;
 - school facilities lease purchase program;
 - school revolving renovation program;
 - MMBB general fund and reserve funds

PART I [PUC]

1. Requires T&D decoupling. Requires PUC to establish decoupling for T&Ds (RAM disconnecting profits from sales) (I-15)
2. Distributed renewable energy technology. Defines “distributed renewable energy technology (p. 28):
 - capacity \leq 5 MW or equivalent
 - uses fuel cell
 - tidal
 - solar

² Federal program assists very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Participants find their own housing, including single-family homes, townhouses and apartments. Administered locally by public housing agencies (PHAs). Rental units must meet minimum standards of health and safety, as determined by the PHA. Housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. (From HUD website, edited)

³ State program to assist people with psychiatric disabilities unable to afford to rent housing of their choice in the community. BRAP assist individuals with housing assistance for up to 24 months or until they are awarded a Housing Choice Voucher (aka Section 8 Voucher), another federal subsidy, or alternative housing placement. (From DHHS website, edited)

- wind
 - geothermal
 - hydro
 - thermal storage
4. Regulate EM and the administrator of EM. Provides that the PUC has jurisdiction to regulate EM as a public utility and to regulate the administrator of EM with re: reasonableness and adequacy of service, terms and conditions (see I-3, I-10, I-11)
NOTE: appropriate for PUC to serve on the board of EM and to regulate it as a public utility?
 5. Regulate appliances. Provides that the PUC has jurisdiction to regulate appliances (I-4)) (see Part L)
 6. Rates for DG. Prohibits T&Ds and gas utilities from charging higher rates to customers who uses distributed technology (I-5)
 7. Access to utility billing systems. Requires T&Ds and gas utilities to partner with EM and allows EM and entities designated by the PUC to use the utilities' billing systems to collect from ratepayers amounts due for their services. Also allows EM to distribute information through the utilities billing system. (I-6))
 8. EM complaints. Allows PUC to award costs to EM if EM brings a complaint against a public utility that results in an administrative penalty (I-7 and I-9)
 9. New transmission lines. Requires T&Ds to consider efficiency standards in constructing new lines (I-14)
 10. Confidential information. Adds EM to provisions allowing PUC to designate as confidential certain information potentially affecting security of utility systems (I-8)
NOTE: Will require review by JUD.
 11. add EM to jurisdiction of OPA (I-12)
 12. ME Public Utility Financing Bank Adds EM as a public utility under the ME Public Utility Financing Bank (I-13)
NOTE: Not clear if this works – EM not authorized to issue bonds which MPUFB could purchase

PART J [ALL FUELS CHARGE; RPS; REPEAL OF EXISTING PROGRAMS]

1. RPS increase. Increases “new source” portfolio standard (preserves existing 30% portfolio requirement) so that
 - beginning in 2011, the rate of increase in percent requirement for new sources increases to reach 23% in 2017
2. Moves most PUC energy programs and RGGI trust to EM (or administrator)
 - provides that the PUC and MSHA must consult with EM in developing residential energy efficiency disclosure statement (for landlords to provide to renters)
 - repeals requirement that natural gas utilities provide conservation programs (EM administers new eff. programs)
 - moves PUC's energy auditor and solar installation training programs to EM
 - repeals all of PUC's energy conservation programs (EM administers new eff. programs)
 - provides that EM Administrator administers the carbon trust fund and reports to trustees (use of RGGI fund unchanged and trustees preserved)
 - NOTE: preserves MECB and PUC administration of solar/wind rebate program
3. Heating fuel wholesalers subject to penalties. Makes heating fuel wholesalers subject to PUC admin penalty law
4. Energy efficiency credit payment. Establishes energy efficiency credit payment system under which all T&Ds, gas utilities, and heating fuel wholesalers must make annual payments to EM
 - A. The efficiency credit system:

Electricity
• Starting rate: \$0.06/kwh (or 60% retail energy cost, whichever less)
• Rate inflation-adjusted by PUC annually (no more than 60% avg. retail prices)
• x 15% kwh delivered/year = \$ _____ (1 st year)

<p>Natural gas</p> <ul style="list-style-type: none"> • Starting rate: \$0.88/therm • Rate inflation-adjusted by PUC annually (no more than 60% avg. retail prices) • x 15% of therm- equivalent delivery/year = \$ _____ (1st year)
<p>Heating fuel</p> <ul style="list-style-type: none"> • Starting rate: \$0.88/therm-equivalent • Rate inflation-adjusted by PUC annually (no more than 60% avg. retail prices) • x 8.25% of therm- equivalent delivery/year = \$ _____ (1st year)

- B. All funds go to EM (Efficiency Trust Fund)
- no sta-cap or di-cap allowed
 - \$1.3 m/yr can be used for admin costs (see p. 37, lines 6-11) of EM board, PUC, ERC and MECB (p. 41, lines 9-35) (Note: *This is the current cap on the PUC's EM administrative fund*)
 - EM administrative costs drawn from funds available to EM (credit revenue, fed funds, etc.) on “proportional basis”
 - *Allowable administrative costs of EM Administrator presumably handled by contract*
 - 5% to green jobs initiation (see Part D and p. 68)
 - 1% for DSM and renewable R&D (see p. 70)
 - At least 0.1% for educational programs (see p. 70)
 - remaining amount to be spent on efficiency programs: proportional funding to the energy source and economic sector from which \$ derived
 - Up to \$100,000 may be used by PUC to promote renewables (current law allows use of T&D SBC for this, bill allows the funds to come out of Eff. trust Fund – see. p. 78, line 31))
 - By end of 2019, EM must demonstrate that it has achieved savings at least equal to value of credits purchased (PUC adopt routine technical rules regarding measurement and verification of savings)

PART K [New EM]

1. New entity called Efficiency Maine. Creates a new entity called Efficiency Maine (EM) to develop and run programs to increase energy efficiency conservation and distributed renewable energy technology (EC&DRE)
2. FAME to issue revenue bonds. Allows FAME to issue revenue bonds on behalf of EM
3. EM Board composed of 10 members
 - a. director SPO
 - b. OPA to represent small business and residential customers
 - c. director OEIS
 - d. director MSHA
 - e. PUC chair
 - f. Commissioner DEP
 - g. Commissioner Labor
 - h. trustee of Carbon Saving Trust
 - i. commercial consumer --appointed by Gov and confirmed by Legislature
 - j. industrial consumer -- appointed by Gov and confirmed by Legislature
4. Board staff. PUC provides staff to board and board may hire its own staff
5. Personal liability immunity. EM members and employees exempt from personal liability for acting in scope of law

6. Administrator. EM appoints and contracts with an administrator who develops and administers EM programs – a nonprofit entity
- board must, in the contract, establish performance measures and require management audits every 5 years
 - board also reviews and comments on administrator's plan and actions and budget
 - Administrator has broad power to run programs, spend funds, enter contracts, issue loans, establish qualifications for contractors, etc.
 - must in contracting and funding projects ensure certain labor standards are met (see p 50 and 51)
 - project labor agreements
 - affirmative action 5 MRSA §782
 - preference for state residents 26 MRSA §1301
 - preference for state citizens; fair wage requirements 26 MRSA §1304; 26 MRSA §1313
 - target 20% of jobs created filled with unemployed or low-income persons
 - may aggregate public entities, nonprofits and small business to purchase energy efficiency conservation and distributed renewable energy technology services or products in bulk
 - requires all agencies to cooperate with EM
 - makes
 - all members of EM board and employees and contractor of administrator subject to conflict of interest provisions of 5 MRSA §18 only;
 - except senior managers of the administrator are subject to financial disclosures under 5 MRSA §19.
 - 17 MRSA §3104 does not apply to any representative of EM
 - requires EM to provide annual reports to Governor and Legislature
 - requires EM to provide annual financial audit to Treasurer
 - provides that EM is also subject to State Auditor audits (p. 54 line 34)
7. Confidentiality. Provides generally that EM board and Administrator records are public records under FOA law (*Administrator, since a private entity, wouldn't otherwise be subject to FOA*), but establishes broad confidentiality for EM records. (p. 54-56)
- Confidentiality for records:
 - developed or obtained by EM prior to receipt of written application as proposed for assistance
 - for records the person submitting asks to be kept confidential if board determines it to be competitively sensitive
 - financial statements or other information board determines disclosure of would constitute invasion of privacy
 - record containing statement by person not employed by EM of credit worthiness of a person or project
 - certain records are exceptions to above confidentiality:
 - after filing of application – named applicant, assistance provided or requested and description of project, names of transferor, or transferees of property to or from EM, energy related benefits of project, names of financial institutions participating
 - other information EM waives confidentiality of
 - prohibits wrongful disclosure – allows board in its discretion to authorize certain disclosures (e.g. statistical info, in litigation, etc.)
- NOTE: Will require review by JUD.**
8. Tax exemptions. Provides for general tax exemptions for EM
- leases and mortgages
 - all property

9. Exemption from competitive bidding. Selection of service providers (would appear to include selection of administrator) not subject of rules of State Purchasing Agent (competitive bidding)

10. Funding –

- (i) efficiency credit revenues (EC \$)
- (ii) federal funds (e.g. SEP, EECBG)
- (iii) funds, appropriated or allocated by legislature
- (iv) “proportional share from each EM funding source” for admin, workforce development (5%) and R&D (1%)

11. The programs

(i) Residential

- low-income – 1st priority:
 - by end 2018, provide services to each low-income resident
 - 60% of avail. residential program funds (funds derived from residential sector) to be spent on low income households;
 - 20% of EC \$ from electricity charge to low-income households
 - each low-income resident receives at least \$4,200/yr from EM adjusted for inflation
 - if after doing all measures with payback of 20 yrs and any feasible dist. gen. any subsidy left over, can be pooled to provide DSM in community or fund fuel switching
 - in addition, EM must ensure that amount of EC charge that is passed on to low-income households eligible for LIHEAP is distributed back to those households
- middle income – 2nd priority
 - EM strive to subsidize half of services provided and overcome economic barriers
- others – EM may adopt programs to serve them as well
- generally
 - EM to promote all DSM measures with 15 yr or less payback
 - EM to seek to ensure all units that get services have an energy audit
 - Seek to make programs that benefit renter also attractive to landlords
 - EM shall cooperate with MSHA: MSHA administers federal LIHEAP and weatherization so as to max. forward capacity payments to EM for efficiency resources
 - EM and MSHA jointly administer new 30-A §4748 low-income rental housing standards
 - EM may contract the MSHA to deliver EM residential programs

(ii) Commercial programs

- small business – 1st priority:
 - goal: by end 2018, provide services to each small business
 - at least 40% of avail. commercial program funds (funds derived from commercial sector) to be spent on small businesses;
- EM seek to ensure each building for which EM services sought gets full evaluation for efficiency and DG
- At minimum provide free evaluations and technical assistance
- EM may not substitute its services for those reasonably available in market
- EM promote all DSM with payback of 15 years or less and leverage funds for heat energy efficiency and demand reduction
- strive to overcome economic barriers to small business DSM
- Seek to make programs that benefit renter also attractive to landlords

- (iii) Public sector programs
 - municipalities and counties, particularly those with limited resources and small populations – 1st priority:
 - goal: by end 2018, provide services to each municipality and county
 - EM seek to ensure each building for which EM services sought gets full evaluation for efficiency and DG

NOTE: appears to be a typo on p. 64, line 21: reference to “commercial program” – should presumably be public sector program
 - EM may not substitute its services for those reasonably available in market
 - EM promote all DSM with payback of 15 years or less and leverage funds for heat energy efficiency and demand reduction
 - Seek to make programs that benefit renter also attractive to landlords
 - EM administers with MMBB the Efficiency Partners program (see Sec. H-1)
- (iv) Higher Education, hospital and nonprofit programs
 - strive to overcome economic barriers to DSM
 - EM at minimum provide free evaluation and technical assistance
 - EM may not substitute its services for those reasonably available in market
 - EM promote all DSM with payback of 15 years or less and leverage funds for heat energy efficiency and demand reduction – may assist entities with DSM having longer payback
- (v) Industrial programs
 - small business – 1st priority:
 - goal: by end 2018, provide services to each small business
 - strive to overcome economic barriers to DSM
 - EM shall provide free evaluation and technical assistance
 - EM may not substitute its services for those reasonably available in market
 - EM promote all DSM with payback of 15 years or less and leverage funds for heat energy efficiency and demand reduction – may assist entities with DSM having longer payback
 - Industrial to whom EC charge is passed on entitled to received EM services of value equal to amount passed on
 - EM must avoid giving one business competitive advantage over another – may give more benefits to small businesses and may support DSM with payback longer than 15 years
 - Seek to make programs that benefit renter also attractive to landlords
- (vi) Workforce development
 - 5% of EC charges and forward capacity payments received to the Green Job programs (See Part D)
 - EM may establish training for solar equipment installers
 - EM may establish energy auditor training
 - EM determines who is qualified to perform work subsidized by EM
 - EM may establish other training programs
- (vii) R&D

- 1% of EC charges and forward capacity payments received to MTI's Maine Technology Capacity Fund (5 MRSA §15303-A) for R&D on technology related to DSM and renewable energy – except that EM can decide on its own to keep the funds if it determines the funds are displacing other MTI funds
- (viii) Education programs
 - at least 0.1% of EC charges and forward capacity payments received to public information programs (manuals, fact sheets, etc.)
 - EM may allow Administrator to charge fees to reimburse it for educational services provided
- (ix) Load management programs
 - EM shall develop load management programs and accept forward capacity payments to fund such projects – partner with utilities or others to carry this out

PART L [APPLIANCE STANDARDS]

1. Standards, incentives, labeling and education.
 - a. PUC shall adopt by rule
 - i. operating efficiency standards,
 - ii. incentive programs,
 - iii. labeling, and
 - iv. consumer education programs

to promote energy and water efficiency appliances whose use requires significant amount of energy or water use on statewide basis.
 - b. Standards become effective no less than 1 year after adoption or revision
 - c. Standards may not result in added total consumer cost over life of appliance
2. The California appliance standards.
 - a. Within 3 months of effective date of law, PUC must adopt by routine technical rule the California appliance standards with same effective dates, except no standards take effective sooner than 1 year after adoption of rule.
 - b. subsequent amendments to rules are major substantive rules, except for specific types of changes, which remain routine technical rules:
 - i. increase standard up to a national voluntary consensus standard (e.g., ASHRAE consensus standards)
 - ii. change of measure but not operating efficiency standard itself
 - iii. adjustments to reflect changes in test procedures
 - iv. readoption of a standard what had been found preempted or enjoined and then is determined not to be or applicable law changes
 - c. PUC shall seek waiver for any CA standards that are preempted under federal law
 - d. Application: new appliances can't be offered for sale for use in state unless certified as in compliance (exception for appliances designed exclusively for mobile use (RVs))
 - e. Bill lists various specific appliances that are regulated under the chapter ("including but not limited to")

PART M [MISCELLANEOUS]

1. State Purchasing Agent must report by 1/1/10 to NAT on compliance with current fleet fuel economy standards under 5 MRSA 1812-E

- a. Cars and light duty trucks purchased/leased by State must have manufacturer's estimated highway mileage rating of: cars 45 MPG and light duty trucks 35 MPG.
2. Requires the Department of Labor and the Department of Economic and Community Development to submit by 1/1/10 a proposal for a green energy industry partnership for the downeast and coastal regions for funding by the Northern Border Regional Commission and to explore other possible energy industry partnership proposals.
3. Directs the Department of Economic and Community Development to analyze and report to BRED by 3/1/10 on barriers to participation in the green energy economy by businesses owned by women, minorities and other target populations.
4. Directs the Department of Labor and the Department of Economic and Community Development in carrying out their duties under the Green Energy Job Growth Initiative and Part D of the bill to consider approaches taken in Oregon and Washington.
5. Provides an application provision grandfathering certain already-approved construction projects of the State, counties, municipalities and schools from the new efficiency standards established under the bill.
6. Provides that it is the Legislature's intent that various specific programs now administered by various agencies (FAME, MSHA, ME CAP Assoc., DOC, DEP, PUC, OPA and University of ME Cooperative Ext.) be administered by Efficiency Maine or coordinated with its efforts.
7. Provides for the transfer of all of the Public Utilities Commission's Efficiency Maine program assets, fund and contracts to the new Efficiency Maine entity established under the bill.

NOTE: Not clear how quickly the new EM will be able to be up and running and actually able to operate programs (public members of board must be appointed and confirmed by Legislature, administrator must be hired, office established, competent staff in place, programs developed, rules adopted etc.) May need to provide a bridge of some sort from current paradigm to the new paradigm to avoid unintended hiatus in programs.

PART N [Technical]

1. Corrects cross-references to be consistent with the changes to law made in the rest of the bill.

TESTIMONY SUMMARY (Public hearing: 1 April 2009)

<p><u>In Support:</u></p> <ul style="list-style-type: none"> • Plan to create a \$300m/year market for efficiency and renewables; 30% more non-transportation energy efficiency by 2020; create 10K jobs; green career ladder and targeted workforce development • “re-channel” \$178M in future energy expenses into efficiency • leverage millions in funds from outside Maine • Train green workers for non-exportable jobs • Support renewable R&D, such as wind • hybrid entity provides public accountability and private sector agility • bill full of energetic ideas but be careful: <i>issues</i>: <ul style="list-style-type: none"> ○ not all housing stock suited to economic 	<p><u>In Opposition:</u></p> <ul style="list-style-type: none"> • Very expensive bill: \$160-\$180M in new revenue; 23% increase in electric delivery rates; • inappropriate to allow entities to use T&D billing system to collect their charges – expensive for T&D, confusing to customers • inappropriate to allow State to use T&D billing system for providing messages • decoupling rates from peak load unclear – T&D rates aren’t tied to peak load
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<ul style="list-style-type: none"> <ul style="list-style-type: none"> rehabilitation; ○ old mobile homes shouldn't be insulated; ○ reservations about 9% tax on electricity; many large users already know how to be efficient – if you raise rates, you may run them out of State • removes barriers to DSM (imperfect info., ESCO skimming, landlord/tenant split incentives, upfront costs, absence of economies of scale) • workforce development modeled on an introduced federal bill (SECTORS Act) • comprehensive approach • workforce training is key • one-stop shopping is good approach • infrastructure “to change how Maine thinks” re: energy • creates a clear path out of poverty through workforce development • significant concerns about tax on heating oil: impact on low-income persons • FAME bonding for energy efficiency projects will be very helpful tool • current PUC EM not set up to work well with small business • Exceedingly ambitious bill: much that looks good; <i>issues</i>: <ul style="list-style-type: none"> ○ should include more stakeholders in board; ○ should be a cost-effectiveness standard for all DSM programs; ○ avoid creating parity between DG and efficiency; ○ avoid decoupling • Vocational centers, community colleges, University already working on green jobs education • Bold and innovative proposal • Good ideas but <i>issues</i>: <ul style="list-style-type: none"> ○ Don't provide free audits – rebates better ○ Don't have EM contract with providers – let market do the work ○ Don't let nonprofits and government compete with private market – will push folks out of market 	<ul style="list-style-type: none"> • allowing the new EM to access confidential customer information and then potentially share it with other agencies troubling • don't mandate every building to have audit • heating fuel assessment probably not workable • don't create appliance standards
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Neither for nor against:

- Exceedingly complex bill – convoluted and far too long; too much detail
- Need to consider the many transition issues associated with proposal of this size
- Is relationship with PUC clear and appropriate? (serve on board, regulate EM)
- Cost to ratepayers of increasing RPS about \$120 million in 2017
- Free audits of all homes may not be most cost-efficient use of money (est. cost of \$250M)
- Composition of board should be reconsidered; need more outside input
- Workforce development unnecessary – recession has fully addressed workforce need
- Prioritize RGGI funds to be competitively distributed to manufacturers for investment in more efficient machinery
- Definition of green building standard may exclude sustainably grown ME lumber
- Expand definition of DG to include CHP wood boilers
- Green jobs focus may exclude forest products industry jobs
- Require rate reduction as part of bill (bill would raise rates)
- In analyzing barriers to business entry into Green economy, look at difficulties for small businesses
- Concern about impact on ratepayers
- KVCC has an NABCEP certified training program for solar installers and is developing energy services and technology 2- year program
- Use the massive amounts of new federal funds first – don't create new taxes now

NOTES & POTENTIAL TECHNICAL ISSUES

- See notes in summary for certain technical issues
- PUC:
 - Relationship between PUC and EM potentially problematic: EM a public utility and PUC on board
 - Various transition issues that should be worked out (while simultaneously deploying unprecedented amount of new funding)
 - new line CPC&N already involves examination of energy efficiency alternatives – not clear what Sec. I-14 intends to add to that evaluation
 - With regard to mandating specific ratemaking mechanism (decoupling): PUC opening a proceeding that will consider how well utility incentives align with goal of efficiency
- MSHA:
 - P. 21, lines 14-29: concern that increasing standards for low-income housing (vouchers) may limit available housing (already difficult to meet demand)
 - P. 21, lines 32-37: very limited opportunity for increasing weatherization portion of LIHEAP from 15% to 20%
 - P. 36: rental disclosure statement new energy efficiency comparison requirement would be expensive to produce
- FAME:
 - indicates that the change to private activity bond ceiling (Sec. B-1, B-2) unnecessary
 - concern about EM administering its Economic Recovery Loan Program (Part M)
- CMP suggests that allowing EM to use T&D billing system for information distribution about its programs and how customers can conserve energy would be unconstitutional (I-6)

NOTE: language of bill indicates that the information may not express any viewpoint unless the utility agrees and prohibits the distribution of information that would infringe the utility's rights of free speech and association. Determining what "technical information" about EM and energy efficiency could be inserted in utility's bills without infringing the utility's constitutional speech and association rights would require analysis by EM.

INFORMATION REQUESTS

- Cliff Ginn (Opp. ME) agreed to provide detail on assumptions behind figures in his testimony on household efficiency savings: cost of \$4,200 produce \$6K-\$15K long-term (13-year) savings
- Cliff Ginn agreed to provide conversion of \$.88/therm fee for natural gas and heating fuel to actual price for customer
- Carla Dickstein (CEI) agreed to look at effect that labor contract standards in bill would have on small businesses
- Ed Holt agreed to provide his testimony in writing
- Peter Trost (Energy Circle.com) agreed to provide suggestions for innovative ways that have been tried elsewhere to finance efficiency measures
- Steve Schley (Pingree Assoc.) agreed to provide suggestions for other ways to set priorities for spending if all buildings not audited
- Steve Schley agreed to provide copy of Maine Forest Service report *Future Forest Economy*
- Ana Hicks (ME Equal Justice) agreed to provide in writing suggestions as to how to protect low-income persons from impact of heating fuels tax
- Kathleen Newman (Assoc. Contractors) agreed to provide information on how many contractor businesses in State have less than 25 employees
- Mike Mahoney (BHE) agreed to provide specific concerns about the bill in writing

FISCAL IMPACT

LD 1181 (Rep. Berry)
FUND SOURCES, AMOUNTS AND USES

Funding source	Amount	Use
1. T&D charge	<ul style="list-style-type: none"> Starting rate: \$0.06/kwh (or 60% retail energy cost if less) Rate inflation-adjusted by PUC annually (no more than 60% retail prices) x 15% kwh delivered/year = \$ (1st year) 	<ul style="list-style-type: none"> \$1.3 m for EM board, PUC, ERC¹ (up to \$200K) and MECB² admin costs Admin costs of Administrator not statutorily limited
2. natural gas utl. charge	<ul style="list-style-type: none"> Starting rate: \$0.88/therm Rate inflation-adjusted by PUC annually (no more than 60% retail prices) x 15% of therm delivery/year = \$ (1st year) 	<ul style="list-style-type: none"> 5% of 1-4 for Green Jobs Initiative 1% of 1-4 for renewable R&D at least .1% for public education up to \$100,000 for PUC to promote renewables
3. heating fuel charge	<ul style="list-style-type: none"> Starting rate: \$0.88/therm Rate inflation-adjusted by PUC annually (no more than 60% retail prices) x 8.25% of therm delivery/year = \$ (1st year) 	<ul style="list-style-type: none"> rest spent on efficiency programs: proportional funding to the energy source and economic sector from which \$ derived
4. Forward capacity payments	<i>indeterminate</i>	
5. FAME bond funds	payments from ISO for capacity created through EM programs <i>indeterminate</i> (repaid from EM revenues)	
6. RGGI sale of CO2 allowances and related ISO capacity payments	<i>indeterminate</i> <ul style="list-style-type: none"> RGGI min. under current floor = \$6.7 m/yr RGGI at most recent (March) auction price³ = \$12.4 m/yr RGGI max. at cap (\$5/allowance) = \$17.9 m/yr 	Administered by EM: <ul style="list-style-type: none"> 85% for electricity conservation programs 15% for fossil fuel conservation and arrangements up to 5% for admin. (2% EMT; 3% DEP and AG)
7 federal weatherization funds	DHHS: historic 9-yr avg. about \$4,300,000/yr ⁴ DOE: historic 9-yr avg. about \$2,800,000/yr ⁵ ARRA one-time DOE: \$41,935,015	MSHA administer in accordance with federal rules under contract with EM (NOTE: expenditure of ARRA funds subject to legislative approval under current law)
8 federal SEP funds	historic 9-yr avg. about \$400,000/yr ⁶ ARRA one-time: \$27,305,000	Administered by EM (NOTE: expenditure of ARRA funds subject to legislative approval under current law)
9 federal EECBG	no historic funding; may now be on-going funding ARRA one-time funding: \$9,593,500 ⁷	Administered by EM (NOTE: expenditure of ARRA funds subject to legislative approval under current law)

¹ Energy Resources Council

² Maine Energy Conservation Board

³ \$3.51/allowance

⁴ MSHA figures 2000-08 (does not include 10% admin.); includes both weatherization and Central Heating Improvement Program for furnace replacement.

⁵ DOE figures for 2000-08 (includes 10% admin. costs and 10% for training and other uses)

⁶ EERE figures for 1999-2007, see http://apps1.eere.energy.gov/state_energy_program/projects_all_by_state.cfm/state=ME

⁷ State must pass not less than 60% on to cities and counties ineligible for direct formula grants from the DOE. Each state decides how to award these sub-grants.

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 26, 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 955, An Act to Transform the Maine Economy and Create Jobs**

BILL SUMMARY

CONCEPT DRAFT SUMMARY

This bill proposes to create the Energy Trust Authority under the Governor's Office of Energy Independence and Security.

The purpose of the authority is to actively pursue and negotiate opportunities to transform the State into the greenest and healthiest state and to create jobs through:

1. Actively pursuing opportunities to lease portions of the State's highways and rights-of-way, including Interstate 95 and the Maine Turnpike, for the transmission of energy, including electricity, natural gas or other fossil fuel;
2. Ensuring the interconnection between the State's major transit systems of rail, ports and highways to maximize the State's connection to the national and international economy; and
3. Developing and implementing specific programs that ensure the State's reduction of its carbon footprint and greatly expanding healthy opportunities for the people and businesses of this State.

The Energy Trust Authority will consist of the following voting members:

1. The Public Advocate;
2. The Director of the Governor's Office of Energy Independence and Security;
3. The Chief Executive Officer of the Finance Authority of Maine;
4. A commissioner of the Public Utilities Commission;
5. A representative from the University of Maine System;
6. A representative from the Maine Community College System;
7. The Commissioner of Economic and Community Development or the commissioner's designee;
8. The Commissioner of Transportation or the commissioner's designee;
9. Four public members representing industry, labor, environmental groups, the health care industry and agriculture, appointed by the Governor and confirmed by the Legislature; and
10. Four Legislators, 2 Senators appointed by the President of the Senate and 2 House members appointed by the Speaker of the House.

NOTE: *having legislative members on a board with executive functions would raise substantial constitutional separation of powers issues.*¹

¹ For discussion of this constitutional separation of powers issue, see Op of AG No. 92-4, June 3, 1992.

The Energy Trust Authority will be a quasi-state entity, with the broad powers to accomplish its purpose, including

- the power to develop and implement programs,
- enter into contracts with public and private entities to accomplish the purpose of the authority,
- issue revenue bonds through the Maine Municipal Bond Bank,
- contract with the Finance Authority of Maine or other entities to provide loans or grant funds,
- develop and adopt rules,
- set standards for energy efficiency and weatherization funded by the authority,
- retain certain confidential information under provisions similar to the Finance Authority of Maine's confidentiality exemptions and
- exercise other responsibilities possessed by and enjoy protections provided to other authorities under state law.

NOTE: *there are a variety of authorities created under state law; the details of this authority's legal powers and status would need to be fleshed out.*

This bill proposes to use the funds generated through the lease of state assets to support a revenue bond to fund:

1. Interest-free revolving loan programs to fund weatherization and conversion of heating systems for both commercial and residential sectors,
 - a. with the goal of moving the State's energy use from fossil fuel to green energy, specifically green electricity.
 - b. The revolving loan fund will be managed by T&Ds, who have administrative mechanisms for claims and billing already established with each household and building owner;
 - c. This conversion will include greatly expanded use of technologies like geothermal and cold-weather heat exchangers.
2. Expanding research and development into wind power, specifically offshore wind.
 - a. The funds will be used to vertically integrate the wind industry in the State, including development and production of turbines, blades, stanchions and offshore platforms.
 - b. Funds will be provided to the University of Maine System, the Maine Community College System and the Maine Technology Institute to expand research capacity, develop an educated and skilled workforce, expand business opportunities and create partnerships with local, national and international companies with expertise and capacity in offshore wind development;
3. Development of the Maine Expansion Fund to provide flexible funding for companies seeking to expand, start or locate in the State. The Maine Expansion Fund will be used to assist companies involved with targeted technologies, as defined in the Maine Revised Statutes, Title 5, section 15301, subsection 2,² with grants or loans for infrastructure, training support and other financing.
 - a. Eligible companies receiving funds must create net new jobs that pay at least the average labor market weekly wage and provide at least a 50% employer-paid health care benefit, paid sick leave and access to an approved retirement plan.
 - b. Eligible companies receiving funds must build or renovate their facilities to meet the highest energy efficiency standard to minimize their carbon footprint;
4. Expanding research and development into food production to make the State the food basket of the Northeast.

² "Targeted technologies" means biotechnology, aquaculture and marine technology, composite materials technology, environmental technology, advanced technologies for forestry and agriculture, information technology and precision manufacturing technology.

- a. Funds will be provided to the University of Maine System, the Maine Community College System and the Maine Technology Institute to expand research capacity, develop an educated and skilled workforce, expand business opportunities and create partnerships with local, national and international companies with expertise and capacity in food production and the promotion of the Maine brand;
5. Creation of a virtual medical school in the State.
 - a. Funds will be used to expand opportunities for medical education and graduate school opportunities, as well as research capacity, that develop the State as a laboratory for health and wellness while establishing a relationship with the United States Department of Health and Human Services, National Institutes of Health to fund the research and development of the State as a laboratory for improving health and wellness for the country.
 - b. The creation of a virtual medical school will be furthered by using partnerships within the State, through hospitals, educational institutions and research facilities, and medical schools outside of the State;
6. Expanding the State's transportation system, including mass transit, to ensure the flow of goods and services and decrease the State's transportation carbon footprint by expanded utilization of ports, rails and other transit opportunities; and
7. Development of the privately funded East-West Highway and utility corridor to improve connectivity of the Northeast to the heartland of the United States and the international marketplace.

TESTIMONY SUMMARY (Public hearing: 25 March 2009)

<u>In Support:</u>	<u>In Opposition:</u>
<ul style="list-style-type: none"> ○ Need to think big – sky is the limit ○ harness the revenue from leasing the hwy corridors ○ urgency of moving toward heating security ○ lay the ground work – don't get lost in the details now ○ BHE project involves 170 miles of line in ME <ul style="list-style-type: none"> ○ cost to place underground roughly 3-5 times above ground ○ roughly 5 years to complete ● ME Better Transportation Assoc. proposed concept modification: <ul style="list-style-type: none"> ○ primary recipient of lease revenues should be the transportation system ● Opportunity ME proposed concept modification: <ul style="list-style-type: none"> ○ create separate funding source that gets zeroed out to the extent corridor lease funds become available ○ expand beyond revolving loan program to provide grants and technical assistance; expand eligible efficiency measures; allow industrial consumers to be eligible; ensure cost effective ○ modify workforce development to mirror proposed SECTORS Act ○ don't vertically integrate wind development ○ limit to energy and transportation ○ remove PUC and OPA from board (since they will be involved in the CPCN determination on the transmission lines) ● Ruben Brown proposed concept modification: <ul style="list-style-type: none"> ○ Add combined heat and power to things eligible under the revolving loan program ○ Add energy services industry rep. to the board of Energy Trust Authority ● IEPM proposed concept modification: <ul style="list-style-type: none"> ○ limit use of funds to transportation infrastructure and energy 	none

<ul style="list-style-type: none"> ○ avoid giving off-shore wind R&D to U. of ME – unfair competition with private sector ○ provide more latitude with regard Expansion Fund recipients having to meet wage and benefit requirements ○ change board makeup: combine U.ME and Community College rep; have 6 public members (including renewable energy rep.) • CMP proposed concept modification: <ul style="list-style-type: none"> ○ require that corridor space be put out to bid ○ don't have T&D administer revolving loan fund for DSM ○ don't use on-bill loan model • Associated Builders proposed concept modification: <ul style="list-style-type: none"> ○ in assisting companies involved with targeted technologies, also focus on keeping existing jobs ○ include Dept. of Educ, on the board 	
<p><u>Neither for nor against:</u></p> <ul style="list-style-type: none"> ○ Proceed very carefully – understand consequences of leasing corridors ○ loans for energy efficiency not work well – better to do rebates ○ T&Ds not currently set up to administer revolving loan DSM program; would ratepayers bear risk and expense of loans? ○ T&D have conflict of interest in providing DSM for electric usage, but not for heating fuel conversion (e.g. to geothermal) ○ distinction between efficiency and renewable energy – efficiency is cost effective 	

NOTES & POTENTIAL ISSUES

- BHE and MDOT have entered MOU to undertake a Feasibility Analysis of locating underground utility facilities within DOT transportation corridors from Orrington South to New Hampshire boarder (copy attached to BHE testimony). MOU indicates analysis will be finished by mid-July (120 days after date of MOU). If determined feasible, DOT agrees to negotiate with BHE on occupancy agreement for underground HVDC line within transportation corridors
- MTA suggests
 - using revenue generated from lease of its property for anything but debt service and turnpike projects might violate its bond agreements;
 - its right of way has limited capacity to accommodate major utility lines;
 - there may be federal requirements for federally funded highway that would need to be examined (presumably DOT feasibility analysis is examining these issues)
- Bond packages include various proposed amounts for energy-related programs (LD 913 Part C, LD472, LD709, LD858, LD910)
- Several of committee's other bills provide for creation of new energy entities and new funding sources for energy-related programs

INFORMATION REQUESTS

- MTA agreed to provide details of its lease agreement with CMP and process in negotiating it

FISCAL IMPACT

OEIS indicates putting new ETA under OEIS will require a “vast increase in financial resources for the office”

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: February 12, 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

LD 501, An Act To Ensure Maine's Energy Security and Reduce Dependence on Oil

SUMMARY

This bill is concept draft. The bill proposes:

1. Setting aside 85% of revenues derived from the Regional Greenhouse Gas Initiative to:
 - A. Immediately establish an insulation and energy auditing training program at every community college in the State;
 - B. Provide a tax exemption for purchases of building insulation;
 - C. Establish a low-interest loan program for homeowners and businesses to purchase insulation;
 - D. Establish a low-interest marginal risk loan program for equipment and costs to start up insulation companies;
 - E. Provide a progressive tax credit to companies interested in maximizing the insulation value of their buildings, with a higher insulation value receiving a larger tax credit; and
 - F. Insulate homes of low-income residents;
2. Redirecting the focus of the Public Utilities Commission's Efficiency Maine program from electricity use reduction to energy use reduction by:
 - A. Aggressively promoting the reduction of oil use;
 - B. Requiring that preference be given to an energy-saving project based on the return of investment of the project, regardless of the energy source;
 - C. Promoting the use of heat pump technology, giving top economic incentives to exceptionally high coefficients of performance; and
 - D. Aggressively pursuing Internet-based demand-side management programs; and
3. Establish a tax on oil equal to the BTU tax on electricity, the proceeds to fund Efficiency Maine.

TESTIMONY

- need to address burden of energy price (fossil fuel) increases
- need to broaden energy efficiency programs to all fuels
- put money where get biggest return
- energy efficiency tax credits
 - give larger credit for better measures (e.g., based on R-value of insulation)
 - require pre- and post- audits for tax credits
- Need performance-based programs (pre- and post- audit)
- Average efficiency improvements after audit if "job done right": 20% is conservative (depends on

many factors, including especially price of oil)

- Who pays for what?
 - oil tax
 - shift from income tax (probably better suited to national program)
 - if create oil tax to fund residential programs, exempt or reimburse industrial consumers
 - fuel tax: if roughly, to equal current SBC, fuel tax might be
 - about 6.5 cents/gal
 - cost avg. homeowner \$73/yr
 - produce about \$29.7 million
 - don't take money from SBC on T&D and apply to *all*-energy DSM
 - current SBC costs homeowner about \$8/yr and produces \$12-15 million/year
 - don't use RGGI fund for non-electric DSM programs
- Who is the right entity to administer broader (all-fuels) programs?
 - PUC EM program is ready to take on new programs; easier to expand program than create new entity
 - if broaden EM scope to non-electric programs, PUC may not be right entity; maybe need separate entity such as the Energy and Carbon Savings Trust to oversee
 - models in other states,
 - NY Energy Research and Development Authority— independent authority with broad powers, board and staff¹
- Auditor and other training
 - auditor needs to include indoor air quality issues (avoid tight “sick homes”)
 - MSHA auditor program focuses on weatherization
 - PUC's EM Maine Home Performance with ENERGY STAR program provides training for auditors (MaineHP Evaluators) who must then pass the BPI examination for certification as building analyst.
 - Building Performance Institute (BPI) <http://www.bpi.org/content/home/index.php> offers nationally recognized training, certification, accreditation and quality assurance programs – it's auditing/analyst program standards includes air quality issues
 - create incentives for energy auditor training – target builders
 - Maine has the people to weatherize ME buildings -- just need the training
 - need for training for builders with regard to insulation qualities and installation requirements
 - the technical colleges (community colleges) used to have regular home-builder energy forums to present, discuss and share energy issues; would be good to have again; trade groups would be happy to help organize these
- Home energy loan program (HELP) (MSHA)² includes insulation

¹ From website of authority <http://www.nyserda.org/>: New York State Energy Research and Development Authority (NYSERDA) is a public benefit corporation created in 1975 under Article 8, Title 9 of the State Public Authorities Law through the reconstitution of the New York State Atomic and Space Development Authority. NYSERDA's earliest efforts focused solely on research and development with the goal of reducing the State's petroleum consumption. Subsequent research and development projects focused on topics including environmental effects of energy consumption, development of renewable resources, and advancement of innovative technologies. Currently, NYSERDA is primarily funded by state rate payers through the System Benefits Charge (SBC), which was established on May 20, 1996.

² MaineHousing's Home Energy Loan Program (HELP) offers loans at a low fixed rate of only 3.95% (4.194%APR) for home improvements that increase home energy efficiency. Loan amounts range from

- may not need to create any new program support for that
- Avoid creating subsidies for start-up insulation business
 - keep level playing field for existing businesses
- Heating system choices:
 - promote all heating systems, not just heat pumps
 - electric thermal storage (ETS) can be “part of the solution”
 - can help with load balance for wind power
 - needs TOU rates to work financially for customer
 - wood pellet heating can be “part of the solution”
 - need tax credit to make financially attractive to consumer
 - Replacement furnace rate in ME needs to be speeded up; new furnaces are highly efficient
- Maine has good programs (EM’s Maine Home Performance with ENERGY STAR program; MSHA’s HELP and other programs, etc.) – keep them going
- The new building code (MUBEC) will address air quality issues³
- Cost of avg. audit of home about \$450-500 (may include post-audit if auditor does the work)
- Retrofit of old houses very unlikely to achieve efficiency of new home, but can significantly improve efficiency
 - avoid fiberglass insulation in retrofits
- Not all new housing built well or to energy efficient standards

Information requested:

- Jim LaBrecque to provide his oral comments in writing
- David Allen will provide the insulation standards (if any) required under CMP’s Good Cents program
- John Brautigam will provide further thoughts on PUC’s ability to apply federal stimulus funds on a fuel-neutral basis
- PUC will provide information on CMP’s MPRP proposal
- Ruben Brown to provide his comments in writing, including documentation of furnace replacement rates and units sold in ME last year

FISCAL IMPACT: (concept draft)

\$2,800 to \$30,000, with loan terms of up to 15 years. An energy audit is required. HELP loans may be used to finance: Home energy audits; insulation, air sealing, and weather stripping; heating system repair or replacement; Energy Star rated windows and appliances; storm doors and storm windows; ventilation and moisture controls; and roof repairs (if attic is insulated to a minimum R38 value).

³ Pursuant to 10 MRSA ch. 1103, the Technical Building Codes and Standards Board, located within the Department of Public Safety must adopt, amend and maintain the Maine Uniform Building and Energy Code. The code takes effect beginning July 1, 2010. Under PL 2007, ch 699, Sec. 21, the MUBEC will substantively be composed of: The 2009 edition of the International Building Code; The 2009 edition of the International Existing Building Code; The 2009 edition of the International Residential Code; The 2009 edition of the International Energy Conservation Code; The ASHRAE Standards **62.1 (ventilation)**, **62.2 (residential ventilation)** and 90.1; and The Maine model radon standard for new residential construction set forth in Title 25, section 2466 and associated rules.

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 6 April 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 774, An Act to Create Jobs and Improve Energy Efficiency through the Transformation of Maine's Housing Stock**

BILL SUMMARY

This bill:

- Establishes within the Maine State Housing Authority the Maine Energy, Housing and Economic Recovery Program to support
 - the construction of multifamily affordable housing units;
 - renovation of affordable housing units;
 - weatherization of owner-occupied residences; and
 - replacement of manufactured housing units that do not meet the United States Department of Housing and Urban Development regulations, 24 Code of Federal Regulations, Part 3280;
- Directs that a portion of the revenues derived from the real estate transfer tax be deposited in a new fund to provide funds for the Maine Energy, Housing and Economic Recovery Program.
 - In fiscal year 2009-10, \$2,500,000 is transferred to the fund, and
 - in fiscal year 2010-11, \$5,000,000 is transferred to the fund.
 - Thereafter, amounts are transferred as necessary to meet the obligations of the Maine State Housing Authority with respect to revenue bonds issued for the Maine Energy, Housing and Economic Recovery Program; and
- Authorizes the issuance of revenue bonds by the Maine State Housing Authority for the purposes of the Maine Energy, Housing and Economic Recovery Program.
 - The authority may have at any time an aggregate principal amount outstanding on such bonds of up to but not exceeding \$200,000,000.
 - The authority is required to issue revenue bonds in an amount of at least \$30,000,000 in fiscal year 2009-10 and an additional \$30,000,000 in fiscal year 2010-11 and may issue additional amounts as appropriate for the purposes of the program.

TESTIMONY SUMMARY (Public hearing: *date*)

<p><u>In Support:</u></p> <ul style="list-style-type: none"> • meet affordable housing needs; needs are large (study: 86,000 households with severe affordability problems; multiple handouts with details) • create jobs produce new income and sales tax revenues • leverage federal and provide funds • designers, builders hard hit by economy; this will help • over long term will result in greater revenue than cost; boost economy (economic analysis by Charles Colgan) • improve energy efficiency and save money • replace old mobile homes not eligible for federal weatherization • reduce heating oil price shocks 	<p><u>In Opposition:</u></p> <ul style="list-style-type: none"> • concern about adding new housing units to market where homes not now selling • concern about taking \$ out of transfer tax
<p><u>Neither for nor against:</u></p> <ul style="list-style-type: none"> • this will create a substantial hole in budget • will leverage other funding (HUD neighborhood stabilization program funds) 	

NOTES & POTENTIAL ISSUES

- ME Affordable Housing Coalition (MAHC) proposed amendment to provide that certain amounts of the real estate transfer tax that are currently required to be deposited in the General Fund to fund the Maine historic rehabilitation tax credit continue to be deposited in the General Fund.
 - *amendment requires rewriting to achieve intent*
- ME People's Alliance and Preble Street Homes Voices for Justice requests that programs be expanded to ensure housing for those with very-low-income, the low-income elderly, the homeless, and people with disabilities.
- Penquis suggests amending to require that all replacement housing for mobile homes be produced in Maine, either site built or manufactured in Maine
- Ruben Brown proposed amendment to add combined heat and power systems to the eligible uses of the program funds
- MSHA proposed amendments:
 - p. 3 lines 13-20 unnecessary because MSHA already has such authority
 - p. 3, line 27 – change “shall” to allow MSHA some discretion not to issue bonds if unwise for market or other reasons
- Note: LD 910, \$25M bond bill for building new housing and rehabilitating existing housing

INFORMATION REQUESTS

- John Anton of Coalition for Affordable Housing agreed to provide further detail on what could be done with this funding over time (taking into account inflation, etc.) – units that could be weatherized, mobile homes replaced, construction of new units and renovations.
- Linda Gifford agreed to provide detail on numbers of multifamily units currently on market
- Are there housing stimulus funds that could be used to fund first few years of these bonds?
 - According to MSHA, the answer is no.

FISCAL IMPACT

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 5 April 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 980, An Act to Provide a Tax Credit for Heating and Cooling System Alternatives and Improvements that Benefit the Environment and Address Climate Change**

BILL SUMMARY

This bill provides an income tax credit of up to \$5,000 for the costs of necessary and reasonable costs for

- weatherization and efficiency upgrades,
- the purchase and installation of a heating or cooling system that uses a renewable source, including wood pellets, biomass, geothermal, wind and tidal energy
- the purchase and installation of energy efficiency equipment components of an energy system designed for heating or cooling that has been demonstrated by the manufacturer to improve the efficiency of an energy system by at least 10% or that has been identified by the Maine State Housing Authority or Efficiency Maine as an effective method of improving energy efficiency
- the purchase and installation of voltage regulation technology (technology designed to reduce energy consumption, improve grid efficiency and raise or lower voltage dynamically and is 99% or more efficient across at least 90% of the load curve)

The credit may be claimed for installations in tax years beginning in 2009 or 2010 and may be carried over up to 5 years.

The General Fund costs of the credit are reimbursed from the Energy and Carbon Savings Trust Fund.

TESTIMONY SUMMARY (Public hearing: 1 April 09)

In Support:

- dramatic and immediate impact in reducing reliance on heating fuel
- targets those unlikely to qualify for weatherization
- Minimally prescriptive, flexible, require little bureaucracy to implement, complements ARRA
- perhaps use RGGI and other sources to make this work
- best solution to solving addiction to oil; overall economic and consequent state revenue benefits

In Opposition:

- don't use RGGI funds for this

- | | |
|--|--|
| <ul style="list-style-type: none"> • Suggest modifying definition of “alternative fuel” to include fuel used in heating or cooling systems that is derived in whole or part from renewable resource • Suggest amend to include micro CHP systems under 30KW with an overall efficiency of at least 80% (reference to LD 336 amendment in UTE) • Suggest amend to clarify that solar qualifies as renewable | |
| <p><u>Neither for nor against:</u></p> <ul style="list-style-type: none"> • Some greater clarity needed • may want to consider appropriateness of using RGGI funds for this | |

NOTES & POTENTIAL ISSUES

- Greater clarity as to how eligible costs are determined and verified would be advisable (e.g., what is “necessary and reasonable”, etc.).
- PUC:
 - whatever agency is designated to make eligibility determinations – may make sense to require rules to make the standards clear
- MRS has identified various issues (see attached):
 - possible unintended breadth of application (vehicles and boats);
 - MRS lack of expertise to make various eligibility determinations;
 - need for definition of terms;
 - as written not limited to installations in ME
 - double tax benefit for those who can deduct as business expense
 - needs specific application date
- Under current law, only 15 % of RGGI funds are available for fossil fuel conservation measures.

• RGGI min. under current floor = \$6.7 m/yr	15% = \$1m/yr
• RGGI at most recent (March) auction price ¹ = \$12.4 m/yr	15% = \$1.9m/yr
• RGGI max. at cap (\$5/allowance) = \$17.9 m/yr	15% = \$2.7m/yr

INFORMATION REQUESTS

- Can the federal energy stimulus funds be used to support tax credit?
 - DOE guidance on SEP funds 9.7A clearly prohibits use of SEP to subsidize state tax credits
 - Use of DOE weatherization funds quite limited; MSHA confirms that they may not be used to subsidize tax credits
 - Use of EECBG funds not clear: roughly \$9.5 million coming to the State, at least 60% must be re-granted to local communities; remaining 40% would roughly be \$3.8M. This portion remaining with the State might possibly be used to subsidize short-term financial incentives in the form of tax credits (based on limited information provided in DOE’s guidance of March 31, 2009). The PUC is exploring this issue further with DOE.

FISCAL IMPACT

¹ \$3.51/allowance

STATE OF MAINE
Interdepartmental Memorandum
March 26, 2009

To: The Joint Select Committee on Maine's Energy Future

From: Jerome D. Gerard, Acting State Tax Assessor, Maine Revenue Services (MRS)

Subject: LD 980 – An Act To Provide a Tax Credit for Heating and Cooling System Alternatives and Improvements That Benefit the Environment and Address Climate Change

Review of this LD is limited to the bill as it affects MRS.

Sponsor: Senator Douglas Smith.

Estimated Revenue Impact:

Estimated Administrative Cost Impact: Nominal; can be absorbed within current budgetary allotments.

Identified Issues:

- This bill appears to have broad application. As an example, take the concept of weatherization which could apply to all sorts of housing projects, as well as garages, vehicles, boats, etc.
- The bill as written requires MRS to identify fuels considered renewable source fuels, eligible costs, whether or not a component of a heating or cooling system improves the energy efficiency of that system by at least 10%, and whether or not a particular voltage regulation technology reduces energy consumption, improves grid efficiency, raises or lowers voltage dynamically and is 99% or more efficient across at least 90% of the load curve. MRS does not have the expertise to make these determinations. We suggest, therefore, that these responsibilities be given to an agency with the requisite expertise, such as Efficiency Maine or the Office of Energy Independence and Security.
- The following terms need to be defined: *renewable source [fuels], necessary and reasonable costs, weatherization upgrades, efficiency upgrades, heating/cooling systems, energy system, and load curve*.
- It may be desirable to limit the credit to eligible costs for upgrades and installations occurring in Maine. Furthermore, the statute should be clear as to the basis on which the credit amount is to be determined.
- Taxpayers able to deduct eligible costs as a business expense will receive a double tax benefit as a result of the credit.
- The bill does not contain an application date. We suggest that the bill apply to tax years beginning on or after January 1, 2009.

Similar LDs: LDs 501 & 755 (124th, 1st).

cc:	Office of Energy Independence & Security	Efficiency Maine
cc (by e-mail):	Office of Fiscal & Program Review	State Budget Office
	Office of DAFS Commissioner	Jane Lincoln, Executive Dept.
	Office of the Attorney General	Revisor's Office
	Senate Majority Office	House Majority Office
	Senate Minority Office	House Minority Office

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 26, 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 755, An Act to Help the State Achieve Energy Independence and Security**

BILL SUMMARY

- The bill creates an income tax credit for persons eligible for a benefit under the Circuitbreaker Program (see summary below) for 10% of the cost of the installation of energy efficiency equipment, qualifying nonfossil fuel energy systems and weatherization materials on a structure in the State.
- OEIS would certify the equipment, systems and materials.
- The credit is limited to \$250 per tax return per structure.
- Funding for the credit of up to \$750,000 must be transferred to the General Fund from the Energy and Carbon Savings Trust Fund.

TESTIMONY SUMMARY (Public hearing: 3/11/09)

<p><u>In Support:</u></p> <ul style="list-style-type: none"> • consistent with RGGI allocation of 15% for fossil fuel reduction • savings from weatherization and changing to alternative energy sources significant • attract attention of consumers as to savings that could be realized • can be one part of comprehensive energy plan 	<p><u>In Opposition:</u></p>
<p><u>Neither for nor against:</u></p> <ul style="list-style-type: none"> • OEIS would require resources to do certification • installation is also critical – should certify installation as well • PUC not aware of any certification programs for weatherization materials • Carbon trust will be providing incentives for this sort thing- not clear tax credit would do better • federal tax incentives may be sufficient to address this 	

NOTES & POTENTIAL ISSUES

- As drafted, the credit would be allowed only for 10% of the “costs of installation” of qualified equipment, systems or material, not the costs of the equipment, systems or materials themselves. The OEIS would certify the qualified equipment, systems or material, but not the installation.
- MRS believes that coordinating with Circuitbreaker creates some issues; see MRS memo (attached)

1. differences in base year (prior year for CB, current year for new credit);
2. calendar year vs. fiscal year filers (bill refers to CB eligibility in “preceding calendar year”);
3. problem of CB eligibility determination being subsequently overturned;
4. problem of MRS delay in CB determination: file for CB, make installation next year based on filing, then learn CB has been denied.

Committee may want to discuss with MRS if wish to maintain coordination with Circuitbreaker. Also please find MRS summary of Circuitbreaker Program, below.

- There may be practical and cost issues associated with establishing standards for certification of equipment, systems and materials (particularly insulation) – see PUC testimony on green paper
- There are federal energy-related tax incentives under ARRA – NCSL summary attached

INFORMATION REQUESTS

FISCAL IMPACT

(OEIS estimates its cost at \$263,000)

MRS summary of the Circuitbreaker Program (36 MRSA ch 907):

Summary of the Program Beginning August 1, 2008 for Refunds of Property Tax Assessed and Rent Paid During 2007. (Note: The program to apply for refunds of property tax assessed and/or rent paid during 2008 begins August 1, 2009.)

Nearly 200,000 Maine households qualify for a partial refund of property tax assessed and/or rent they paid in 2007. The maximum refund available is \$2,000.

You may qualify for a refund if:

- You do not have a spouse or dependent(s) and your 2007 household income was \$60,000 or less; or
- you do have a spouse or dependent(s) and your 2007 household income was \$80,000 or less

AND

- Your 2007 property tax was more than 4% of your 2007 household income; or
- The rent you paid in 2007 was more than 20% of your 2007 household income.

NOTE: Seniors do not need to meet this requirement when their household income is below \$13,600 for those living alone or below \$16,800 for those living with a spouse or dependent. See the application booklet for more information on who qualifies for the senior portion of the program.

STATE OF MAINE
Interdepartmental Memorandum
March 10, 2009

To: The Joint Select Committee on Maine's Energy Future
From: Jerome D. Gerard, Acting State Tax Assessor, Maine Revenue Services (MRS)
Subject: LD 755 – An Act To Help the State Achieve Energy Independence and Security

This analysis is limited to the bill as it affects Maine Revenue Services.

Sponsor: Representative Kenneth Fletcher

Estimated Revenue Impact: The estimate of the revenue impact awaits clarification of the bill as addressed below.

Estimated Administrative Cost Impact: The estimate of administrative costs awaits clarification of the bill as addressed below.

Identified Issues:

- To better coordinate Sections 3 and 4 of the bill, the terms *energy efficiency equipment*, *nonfossil fuel systems*, and *weatherization materials* should be defined in Section 3 (2 MRSA § 9(3)(K)), including in the definitions the criteria that would make the equipment, systems and material eligible for certification. In addition, the definitions in Section 4, 36 MRSA § 5219-DD(1), should be simplified and clarified to avoid ambiguity and potential future controversies between taxpayers and MRS. The term *qualifying system* in § 5219-DD(1)(C)&(2) should be changed to a *nonfossil fuel system* to agree with the term used in Section 3.
- Coordinating eligibility for the credit with eligibility for the Circuit Breaker Program presents some issues that should be considered: the meaning of the phrase *preceding calendar year* in the definition of *qualifying taxpayer* should be clarified; fiscal year income tax filers should be addressed; the base period for measuring eligibility for the Circuit Breaker Program differs from the base period used to determine tax liability; individuals must be full year residents during the Circuit Breaker base period, but Maine residency is not required during the tax year for which a credit is claimed; most individuals qualify for Circuit Breaker only if their property tax is more than 4% of income and certain other individuals only qualify if they receive federal disability payments (if married, both spouses must be receive federal disability payments). The bill does not address what is to be done when a Circuit Breaker determination is subsequently overturned, whether or not in the taxpayer's favor. The installation of qualifying equipment during the same period that Circuit Breaker entitlement first arises would be disallowed with the proposed language.
- Generally, applicants do not know that they qualify under the Circuit Breaker Program until after MRS makes a determination, which in many cases can take several weeks after an application is filed. Thus, an application filed late in the calendar year may not be resolved until the following calendar year. A taxpayer in this situation, having made qualifying installation expenditures during the tax year following the calendar year during which the Circuit Breaker application is filed, will not qualify for the credit because the taxpayer was not found eligible for Circuit Breaker benefit during the calendar year preceding the tax year.
- The sentence in § 5219-DD(2) containing the \$250 limitation should be clarified. We suggest the following: The credit may not exceed \$250-per-tax-return-per-structure for the taxable year.
- Given that the credit applies to installation costs, it appears that it would not extend to the costs of equipment and materials. Is that the intent? If so, the credit would not be available to taxpayers that self-install or who obtain installation assistance but still must pay for the equipment.

cc (by e-mail): Office of Fiscal & Program Review
Office of DAFS Commissioner
Office of the Attorney General
Senate Majority Office
Senate Minority Office

State Budget Office
Jane Lincoln, Executive Dept.
Revisor's Office
House Majority Office
House Minority Office



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Division B - Tax, Unemployment, Health, State Fiscal Relief, & Other Provisions in the American Recovery and Reinvestment Act of 2009 - Title I - Tax Provisions

*For further information, please contact Tamra Spielvogel (tamra.spielvogel@ncsl.org)
or Amanda Naughton (Amanda.naughton@ncsl.org) at NCSL's Washington DC office at (202) 624-5400.*

Public Law 111-5		
Subtitle A - Tax Relief for Individuals & Families		
Part I - General Tax Relief	Making work pay credit	<ul style="list-style-type: none">• Provision applies to taxable years beginning after December 31, 2008• Provides eligible individuals a refundable income tax credit for two years, which is either the lesser of 6.2% of an individual's earned income or \$400 (\$800 in the case of a joint return).• If an individual's adjusted gross income is over \$75,000 (\$150,000 in the case of a joint return), then the credit is phased out at a rate of 2% of that individual's income that exceeds \$75,000 (\$150,000).• Eligible individuals include anyone who is not a nonresident alien, an individual who is claimed as a dependent on another's taxes, and an estate or trust.• Amount is reduced by the amount of any payment received under the Veterans Administration, Railroad Retirement Board, & Social Security Administration & temporary refundable tax credit for certain government retirees.• Each tax return must include the social security number of the taxpayer
	Temporary increase in earned income tax credit	<ul style="list-style-type: none">• Provision applies to taxable years beginning after December 31, 2008• EITC increase up to 45% for taxpayers with 3 or more children• Increases the threshold phase-out amounts for married couples filing joint returns to \$5,000 above the threshold phase-out amounts for singles, surviving spouses, & heads of households, for 2009 & 2010<ul style="list-style-type: none">◦ Begins to phase down at a rate of 15.98% of earnings above \$16,420 (or \$21,420 if married filing jointly)

		<ul style="list-style-type: none"> o Phases down to \$0 at \$35,463 of earnings (or \$40,463 if married filing jointly)
	Temporary increase of refundable portion of child credit	<ul style="list-style-type: none"> • Provision applies to taxable years beginning after December 31, 2008 • Refundable child credit is calculated to apply to 15% of earned income in excess of \$3,000 for taxable years beginning in 2009 & 2010
Subtitle B - Energy Incentives		
Part I - Renewable Energy Incentives	Extension of credit for Electricity Produced from Certain Renewable Resources	<ul style="list-style-type: none"> • Extends the period during which qualified facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, & qualified hydropower may be placed in service for purposes of the electricity production credit by 3 years (through 2013, except 2012 for wind facilities). • Extends the placed-in-service period for marine & hydrokinetic renewable energy resources two years (through 2013) • Technical amendment to definition of small irrigation power facility - clarifies its integration into the definition of marine & hydrokinetic renewable energy facility • Effective for property placed into service after the date of enactment • Technical amendment effective as if included in section 102 of the Energy Improvement & Extension Act of 2008
	Election of Investment Credit In Lieu of Production Credit	<ul style="list-style-type: none"> • Provision applies to taxable years beginning after December 31, 2008 • Taxpayer is allowed to make an irrevocable election to have certain facilities placed in service through 2013 (or 2012 for wind facilities) be treated as energy property eligible for a 30% investment credit under section 48. • A taxpayer electing to treat a facility as energy property may not claim the production credit under section 45 production tax credit. • Property eligible for the credit is tangible personal or other tangible property (not including a building or its structural components), & with respect to which depreciation or amortization is allowable but only if such property is used as an integral part of the qualified facility
	Repeal of Certain Limitations on Credit for Renewable Energy Property	<ul style="list-style-type: none"> • Eliminates the credit cap applicable to qualified small wind energy property • Removes the rule that reduces the basis of the property for purposes of claiming the credit if the property is financed in whole or in part by subsidized energy financing or with proceeds from private activity bonds • Provision applies to taxable years beginning after December 31, 2008, under rules similar to rules of section 48(m) of the Code.
	Coordination with Renewable Energy Grants	<ul style="list-style-type: none"> • Clarifies the qualifying property must be depreciable or amortizable to be eligible for a grant • Permits taxpayers to claim the credit with respect to otherwise eligible property that is not placed in service in 2009 & 2010 so long as construction begins in either of those years & is completed prior to <ul style="list-style-type: none"> o 2013 for wind facility o 2014 for other renewable power facility property eligible for credit under section 45

		<ul style="list-style-type: none"> o 2017 for any specified energy property described in section 48 • Grant amount is 30% of the basis of the property that would be eligible for credit under section 48 or comprise a section 45 credit-eligible facility • Grant amount is 10% of the basis of the property for qualified microturbine, combined heat & power system, and geothermal heat pump property • Provision is to mimic the operation of the credit under section 48 • No renewable electricity credit or energy credit may be claimed with respect to the grant eligible property if grant is paid • No Federal, State, local government, any political subdivision, agency, or instrumentality thereof, or any section 501(c) tax-exempt entity may be awarded such a grant • Secretary of the Treasury will administer grant program • Applications must be received no later than October 1, 2011. • Effective upon date of enactment.
Part II - Increased Allocations of New Clean Renewable Energy Bonds & Qualified Energy Conservation Bonds	Increased Limitation on Issuance of New Clean Renewable Energy Bonds	<ul style="list-style-type: none"> • \$1.6 Billion additional for national new clean renewable energy bond limitation • Allocated by the Secretary of Energy • Applies to obligations issued after date of enactment
	Increased Limitation on Issuance of Qualified Energy Conservation Bonds	<ul style="list-style-type: none"> • \$3.2 billion • expands present-law qualified energy conservation bond program • includes use of loans, grants, or other repayment mechanisms to implement capital expenditures to implement green community programs <ul style="list-style-type: none"> o Enables States to issue such tax credit bond to finance retrofits of existing private buildings through loans and/or grants to individual homeowners or businesses, or through other repayment mechanisms o Can include periodic fees assessed on a government bill or utility that approximates the energy savings of energy efficiency or conservation retrofits o Retrofits can include heating, cooling, lighting, water-saving, storm water-reducing, or other efficiency measures. • Bonds issued for such purposes will not be treated as a private activity bond. • Effective upon date of enactment
Part III - Energy Conservation Incentives	Extension & Modification of Credit for Nonbusiness Energy Property	<ul style="list-style-type: none"> • Raises credit rate to 30% • All energy property otherwise eligible for the \$50, \$100, or \$150 credits is instead eligible for a 30% credit on expenditures for such property. • Extends the provision for one year, through December 31, 2010 • Replaces \$500 lifetime cap (and \$200 lifetime cap with respect to windows) with an aggregate cap of \$1,500 in the case of property placed in service after December 31, 2008 & prior to January 1, 2011 • Eliminates subsidized energy financing.

		<ul style="list-style-type: none"> • Updates the building insulation requirements to follow the prescriptive criteria of the 2009 International Energy Conservation Code • Qualifying exterior windows, doors, & skylights must have a U-factor at or below 0.30 & a seasonal heat gain coefficient ("SHGC") at or below 0.30 • Electric heat pumps must achieve the highest efficiency tier of Consortium for Energy Efficiency, as in effect on January 1, 2009. <ul style="list-style-type: none"> ◦ SEER greater than or equal to 15, EER greater than or equal to 12.5, & HSPF greater than or equal to 8.5 for split heat pumps ◦ SEER greater than or equal to 14, EER greater than or equal to 12, & HSPF greater than or equal to 8.0 for packaged heat pumps • Central air conditioners must achieve the highest efficiency tier of Consortium for Energy Efficiency, as in effect on January 1, 2009 <ul style="list-style-type: none"> ◦ SEER greater than or equal to 16 & EER greater than or equal to 14 for split systems ◦ SEER greater than or equal to 14 & EER greater than or equal to 12 for packaged systems • Natural gas, propane, or oil water heaters must have an energy factor greater than or equal to 0.82 or a thermal efficiency of greater than or equal to 90%. <ul style="list-style-type: none"> ◦ Natural gas, propane, or oil water boilers must achieve an annual fuel utilization efficiency rate of at least 90 ◦ Qualified oil furnaces must achieve an annual fuel utilization efficiency rate of at least 90 • Biomass fuel property must have a thermal efficiency rating of at least 75% as measured using a lower heating value. • Provision is generally effective for taxable years beginning after December 31, 2008. • New efficiency standards for qualifying property, other than those for biomass fuel property, apply to property placed in to service after the date of enactment. • Modification with respect to biomass fuel property is effective for taxable years beginning after December 31, 2008.
	Modification of Credit for Residential Energy Efficient Property	<ul style="list-style-type: none"> • Eliminates credit caps for solar hot water, geothermal, & wind property • Eliminates reduction in credits for property using subsidized energy financing • Applies to taxable years beginning after December 31, 2008.
	Temporary Increase in Credit for Alternative Fuel Vehicle Refueling Property	<ul style="list-style-type: none"> • Modifications for property placed into service in 2009 or 2010 that does not relate to hydrogen <ul style="list-style-type: none"> ◦ Credit rate of 50% instead of 30% ◦ Maximum credit available of \$50,000 instead of \$30,000 ◦ Maximum credit rate available for nonbusiness property of \$2,000 instead of \$1,000 • Increases maximum credit for such property that does relate to hydrogen from \$30,000 to \$200,000 • Applies to taxable years beginning after December 31, 2008.
Part IV -	Application of	<ul style="list-style-type: none"> • In order to qualify for \$10 per metric ton credit, carbon dioxide used as a tertiary injectant &

Modification of Credit For Carbon Dioxide Sequestration	Monitoring Requirements to Carbon Dioxide Used as a Tertiary Injectant	<ul style="list-style-type: none"> otherwise eligible for credit be sequestered by the taxpayer in permanent geological storage Permanent geological storage includes oil & gas reservoirs, unminable coal seams, & deep saline formations Secretary of Treasury must consult with the Secretaries of Energy & Interior & the Administrator of the EPA when promulgating such regulations Effective after date of enactment
Part V - Plug-In Electric Drive Motor Vehicles	Credit for New Qualified Plug-In Electric Drive Motor Vehicles	<ul style="list-style-type: none"> Creates a new 10% credit for low-speed vehicles, motorcycles, & three-wheeled vehicles that would otherwise meet the criteria of a qualified plug-in electric drive motor vehicles except for the fact that they are low-speed vehicles or do not have at least 4 wheels. <ul style="list-style-type: none"> \$2,500 - maximum credit available for electric drive low-speed vehicles, motorcycles, & three-wheeled vehicles. If vehicle draws propulsion energy from a battery with not less than 5 kilowatt hours of capacity, then another \$417 is added for each additional kilowatt hour of capacity up until \$5,000. Part of a general business credit Credit not available for vehicles sold after December 31, 2011
	Credit for Certain Plug-In Electric Vehicles	<ul style="list-style-type: none"> Limits maximum credit to \$7,500 for plug-in electric drive vehicles regardless of vehicle weight Eliminates credit for low speed plug-in vehicles & for plug-in vehicles weighing 14,000 pounds or more 200,000 plug-in vehicles per manufacturer limitation instead of 250,000 limitation Credit phases out over 4 calendar quarters beginning the second calendar quarter following the quarter in which the manufacturer limit is reached <ul style="list-style-type: none"> 50% for first 2 calendar quarters 25% for 3rd & 4th calendar quarters 0% for each calendar quarter thereafter Effective for vehicles acquired after December 31, 2009
	Conversion Kits	<ul style="list-style-type: none"> Creates a new 10% credit of up to \$4,000 for the cost of converting any motor vehicle into a qualified plug-in electric drive motor vehicle Increases the minimum capacity of a qualified battery module to 4 kilowatt-hours Applies to property placed in service after the date of enactment Eliminates credit for plug-in conversions made after December 31, 2011. Lessors of battery modules cannot claim the plug-in conversion credit.
	Treatment of Alternative Motor Vehicle Credit as a Personal Credit Allowed Against AMT	<ul style="list-style-type: none"> Provides that alternative motor vehicle credit is a personal credit allowed against the alternative minimum tax Effective for taxable years beginning after December 31, 2008
Subtitle D - Manufacturing Recovery Provisions		

<p>Credit for investment in advanced energy facilities</p>	<ul style="list-style-type: none"> • \$300 million increase in amount of credits that may be allocated by the Secretary, to \$2.3 billion • Establishes a 30% credit for investment in qualified property used in a qualified advanced energy manufacturing project. • Such a project is one that re-equips, expands, or establishes a manufacturing facility for the production of property designed to be used to produce <ul style="list-style-type: none"> ◦ energy from the sun, wind, or geothermal deposits (within the meaning of section 613(e)(9)), or other renewable sources; ◦ fuel cells, microturbines, or an energy storage system for use with electric or hybrid-electric motor vehicles; ◦ electric grids to support the transmission of intermittent sources of renewable energy, including storage of such energy; ◦ property designed to capture & sequester carbon dioxide; ◦ property designed to refine or blend renewable fuels, but not fossil fuels, or to produce energy conservation technologies, including energy-conserving lighting technologies and smart-grid technologies; ◦ other advanced energy property designed to reduce greenhouse gas emissions as may be determined by the Secretary; ◦ projects designed to manufacture any new qualified plug-in electric drive motor vehicle (as defined by section 30D(c)), any specified vehicle (as defined by section 30D(f)(2)); or ◦ any component which is designed specifically for use with such vehicles, including any electric motor, generator, or power control unit • Qualified property must be depreciable, or amortizable, property used in a qualified advanced energy project • Property designed to manufacture equipment for the use in refining or blending of any transportation fuel other than renewable is not applicable • Basis of qualified property must be reduced by the amount of credit received • Projects must be certified by the Secretary of Treasury in consultation with the Secretary of Energy • Secretary of Treasury must establish a certification program no later than 180 days after date of enactment • Projects to be selected must have a reasonable expectation of commercial viability. • Selection criteria that must be considered: <ul style="list-style-type: none"> ◦ Provide greatest domestic job creation ◦ Provide greatest net impact in avoiding or reducing air pollutants or anthropogenic emissions of greenhouse gases ◦ Have the greatest potential for technological innovation ◦ Have greatest potential for commercial deployment ◦ Have lowest levelized cost of generated or stored energy, or of measured reduction in energy consumption or greenhouse gas emission ◦ Have the shortest project time from certification to completion. • Project applications must be submitted within two years of date that certification program is established • Project applicants must provide evidence that the certification requirements have been met within on year after Secretary accepts application • Projects must be placed in service within three years of date of issuance of enactment of the certification • Secretary must review the credit allocations within four years from the date of enactment of the credit <ul style="list-style-type: none"> ◦ At this point, Secretary may redistribute any credits that were not used either because of a revoked certification or because of an insufficient quantity of credit applications
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	<ul style="list-style-type: none">• Clarifies that the only tangible personal property & other tangible property is credit-eligible, but not including a building or its structural components.
Subtitle G - Other Provisions	
Grants for specified energy property in lieu of tax credits	<ul style="list-style-type: none">• Eliminates credit cap applicable to qualified small wind energy property• Removes the rule that reduces the basis of the property for purposes of claiming the credit if the property is financed in whole or in part by subsidized energy financing or with proceeds from private activity bonds• Effective after December 31, 2008, under rules similar to the rules of section 48(m) of the Code, or in effect on the day before the enactment of the Revenue Reconciliation Act of 1990

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 26, 2009

To: Joint Select Committee on Maine's Energy Future

From: Jon Clark, Deputy Director

Re: **LD 885, An Act to Provide a Tax Deduction for Landlords Who Complete Energy Audits on Rental Units**

BILL SUMMARY

- This bill provides an income tax income reduction (sponsor proposed amend. to tax credit) for a landlord or other lessor of residential property who has demonstrated to the satisfaction of the Public Utilities Commission that an energy audit on that landlord's or lessor's property has been completed.
- Each income reduction (credit) is capped at the cost of the audit, or \$750, whichever is less.
 - For a building with 1 to 4 units, a maximum of one reduction (credit) for that building.
 - For a building with 5 to 25 units, a maximum of 3 reductions (credits) for that building.
 - For a building with 26 or more units, a maximum of 5 reductions (credits) for that building.

TESTIMONY SUMMARY (Public hearing: 25 March 2009)

<p><u>In Support:</u></p> <ul style="list-style-type: none"> • Build on energy efficiency disclosure form and suggested efficiency standards for rental units • create an incentive for landlords to conduct energy audits • Sponsor proposed amendments • add installation of combined heat and power systems 	<p><u>In Opposition:</u></p>
<p><u>Neither for nor against:</u></p> <ul style="list-style-type: none"> • determining certification of audit – various ways to approach through rulemaking 	

NOTES & POTENTIAL ISSUES

- Sponsor proposed amendment:
 - change to a tax credit (will require redrafting the bill)
 - require landlord to complete an energy efficiency disclosure form (14 MRSA §6030-C)
 - require completed audit to be sent to PUC
- Ruben Brown proposed amendment

- require audits to include examination of thermal systems and consideration of combined heat and power options.
- MRS has identified various issues with the bill (see attached). The fiscal impact identified will presumably change if the bill is amended to provide a tax credit rather than an income reduction.
- As MRS indicates the computation of the reduction or credit is unclear. For instance, computing the credit for a landlord who did a \$2000 audit on a building with 26 units and \$1000 audit on a building with 10 units:
 - Is the intent that the landlord would receive $\$750 \times 5$ (a credit of \$3750) for the \$2000 audit and $\$750 \times 3$ (a credit of \$2250) for the \$1000 audit for a total credit of \$6000 (for the \$3000 expense)?
 - or is the intent that the total credit for each audit would be limited to \$750, regardless of the number of units (so a total credit would be $\$750 \times 2 = \1500 credit)?
 - or is the intent that the total credit for the taxpayer for that year would be \$750?
- MRS also notes that landlords can currently deduct the cost of audits as an expense.

FISCAL IMPACT

STATE OF MAINE

Interdepartmental Memorandum

March 23, 2009

To: The Joint Select Committee on Maine's Energy Future

From:  Jerome D. Gerard, Acting State Tax Assessor, Maine Revenue Services (MRS)

Subject: LD 885 - An Act To Provide a Tax Deduction for Landlords Who Complete Energy Audits on Rental Units

Primary Sponsor: Senator Justin Alford.

Estimated Revenue Impact: This bill reduces General and Local Government Fund revenues by \$250,000 to \$500,000 annually.

Estimated Administrative Cost Impact: \$22,000 – Computer Programming.

Identified Issues:

- Section 1 of the bill should not refer to a “tax deduction” but rather to an “income reduction.”
- Section 1 of the bill should require the PUC to issue a certificate for each energy audit for which it would approve as satisfactory for an income reduction adjustment. The certificate should include the cost of each audit, eligible for the adjustment under Title 36.
- The methodology for computing the adjustment under Sections 4 and 7 is not sufficiently clear.
- In both Sections 4 and 7, the term “certified” should be inserted after “audit” as follows: “...the cost of the energy audit certified pursuant to Title 35-A, section 10006, subsection 3...”
- Taxpayers eligible to deduct the cost of the audit as an expense to rental income will receive a double tax benefit as a result of the proposed deduction.

Similar Legislative Proposals: None known.

cc (by e-mail): Office of Fiscal & Program Review
Office of DAFS Commissioner
Office of the Attorney General
Senate Majority Office
Senate Minority Office

State Budget Office
Jane Lincoln, Executive Dept.
Revisor's Office
House Majority Office
House Minority Office

PUBLIC LAWS

Second Regular Session of the 122nd

CHAPTER 534 H.P. 1468 - L.D. 2074

An Act Regarding Energy Efficiency Standards for Residential Rental Properties

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 14 MRSA §6030-C is enacted to read:

§6030-C. Residential energy efficiency disclosure statement

1. Energy efficiency disclosure. A landlord or other lessor of residential property that will be used by a tenant or lessee as a primary residence shall provide to potential tenants or lessees a residential energy efficiency disclosure statement in accordance with Title 35-A, section 10006, subsection 1 that includes, but is not limited to, information about the energy efficiency of the property.

2. Provision of statement. A landlord or other lessor shall provide the residential energy efficiency disclosure statement required under subsection 1 in accordance with this subsection. The landlord or lessor shall provide the statement to any person who requests the statement in person and shall post the statement in a prominent location in a property that is being offered for rent or lease. Before a tenant or lessee enters into a contract or pays a deposit to rent or lease a property, the landlord or lessor shall provide the statement to the tenant or lessee, obtain the tenant's or lessee's signature on the statement and sign the statement. The landlord or lessor shall retain the signed statement for a minimum of 7 years.

Sec. 2. 35-A MRSA §10006 is enacted to read:

§10006. Energy efficiency of rental properties

1. Residential energy efficiency disclosure statement. The commission and the Maine State Housing Authority shall prepare a residential energy efficiency disclosure statement form for landlords and other lessors of residential properties to use to disclose to tenants and lessees information about the energy efficiency of the property in order to comply with Title 14, section 6030-C. The commission and the Maine State Housing Authority shall post and maintain the statement required by this subsection on the Internet in a format that is easily accessible by the public.

2. Suggested energy efficiency standards. The commission and the Maine State Housing Authority shall prepare suggested energy efficiency standards for landlords and other lessors of residential property that is used by the tenant or lessee as a primary residence. The commission and the Maine State Housing Authority shall post and maintain the standards required by this subsection on the Internet in a format that is easily accessible by the public.

Sec. 3. Report. The Public Utilities Commission shall prepare and submit a report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters before January 1, 2008 that provides the commission's assessment of whether the requirements of the Maine Revised Statutes, Title 14, section 6030-C are achieving the purposes of informing prospective tenants of the energy efficiency characteristics of residential properties used as primary residences. The commission also shall include in its report an assessment of whether the form that the commission and the Maine State Housing Authority submitted on January 31, 2006 to the Joint Standing Committee on Utilities and Energy as part

of its report pursuant to Resolve 2005, chapter 109 and that, with changes suggested by the committee, will be used as the disclosure statement under Title 35-A, section 10006, subsection 1, requires adjustments to achieve the purposes of Title 14, section 6030-C.

Effective August 23, 2006.



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About the 2nd Regular & 2nd Special Session Laws Of Maine



*Office of the Revisor of Statutes
State House, Room 108
Augusta, Maine 04333*

Contact the Office of the Revisor of Statutes

